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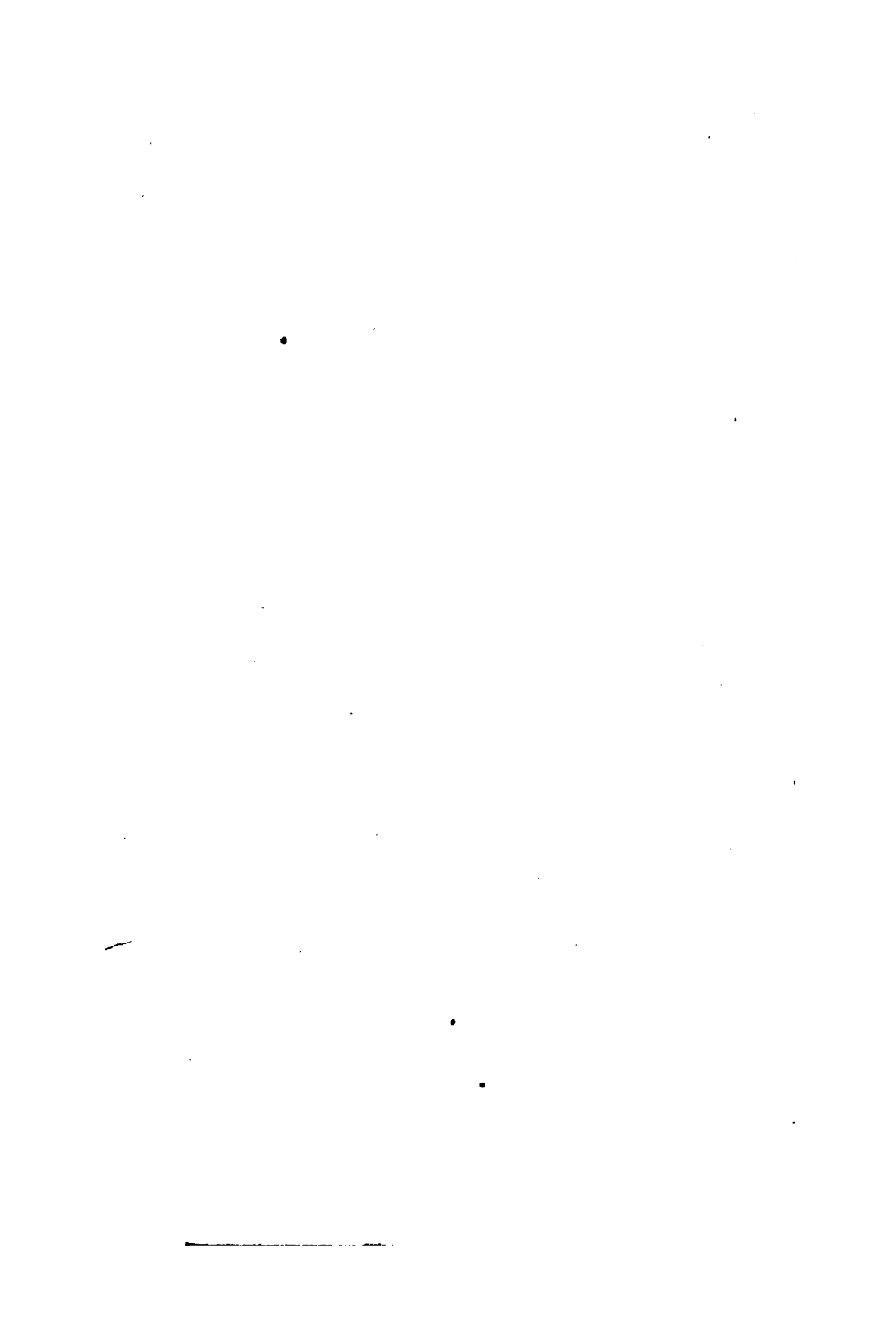


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until it was finally abolished by the well-known Statute of Monopolies in the 21st year of his reign. A proviso in this Statute reserved to the Crown the right of granting letters patent and grants of privilege for the term of fourteen years or under, for the sole working or making of any manner of new manufactures within the realm, to the true and first inventor and inventors of such manufactures, which others, at the time of making such letters patents and grants, should not use.

This proviso is the foundation of our modern patent law. The Statute of Monopolies has been amended and improved by various Statutes, which it is not necessary for us to mention particularly, and into the details of which we shall not enter at present. At this stage of our enquiry, it will be sufficient for our purpose to state the general effect of them, leaving such of the details as we intend to notice, to be stated when we begin to treat of some amendments of the law which we think would be advantageous. The general effect then of the Statutes now in force relating to the granting of letters patent for inventions is as follows:—Any true and first inventor of a new art or manufacture, or any one who is the first introducer into this country of a foreign art or manufacture, can, upon certain conditions, to be noticed hereafter, have granted to him, his executors, administrators, and assigns, the exclusive right of making, using, exercising and vending such new art or manufacture, within the United Kingdom of Great Britain and Ireland, the Channel Islands, and the Isle of Man, for the space of fourteen years from the date of the grant. One of the conditions, upon which this exclusive right is granted, is, that the letters patent shall cease and be void, if at any time during the period for which they were granted it be made to appear to the Sovereign, her heirs, or successors, or to any six or more of the Privy Council, that the grant is contrary to law, or prejudicial or inconvenient to the subjects in general, or that the invention, at the time of the grant, was not a new invention as to the public use and

working thereof within the United Kingdom of Great Britain and Ireland, the Channel Islands, and the Isle of Man, or that the patentee was not the true and first inventor thereof within the realm.

Another condition is, that the grant shall become void: if the patentee, his executors, or administrators, neglect to particularly describe and ascertain the nature of the invention for which the patent has been granted, and in what manner it is to be performed, by an instrument in writing under his, or their, or one of their hands and seals, and to cause such instrument to be filed in the Great Seal Patent Office, within six calendar months next and immediately after the date of the letters patent; or if the patentee, his executors, administrators, or assigns neglect to pay a stamp duty of fifty pounds, and to produce the letters patent, stamped with a proper stamp to that amount, at the Office of the Commissioners of Patents for Inventions, before the expiration of three years from the date of the letters patent; or if he, or they, neglect to pay a stamp duty of one hundred pounds, and to produce the letters patent, stamped with a proper stamp to that amount, at the Office of the Commissioners of Patents for Inventions, before the expiration of seven years from the date of the letters patent; or if he, or they, neglect to supply, or to cause to be supplied, for the public service, articles manufactured by means of the invention, for which the letters patent have been granted, in the manner, at the times, and upon the reasonable prices and terms settled by the officers or commissioners requiring them.

Moreover, if the art or manufacture for which a patent has been granted in this country was first invented in a foreign State, or by any subject of a foreign State, and a privilege of the nature of a patent has been obtained in such foreign State, before the date of the grant of letters patent in England, it is provided, that the privilege granted in England shall cease, on the ceasing of the like privilege

in such foreign State, or if more than one such privilege has been obtained abroad, immediately upon the expiration or determination of the term of such privilege which shall first expire and be determined; and that if such privilege in England was granted after the expiration of the term for which a patent or like privilege, obtained in any foreign country, was granted, or was in force, such privilege shall not be of any validity. If a patentee observe the conditions which we have mentioned, the Crown has power to extend the term of his patent, for any time not exceeding fourteen years beyond the fourteen years for which it was originally granted, provided the Judicial Committee of the Privy Council report that such extension ought to be allowed. The provisions of our patent law, which we have noticed, are sufficient to show, that the law of England does not allow an inventor to have the exclusive use of his invention, without imposing many stringent conditions upon him. We shall now proceed to the first direct issue we intend to discuss, which is, that the practice of granting to true and first inventors the exclusive use of their inventions for a limited period, and upon certain conditions, devised in order to prevent the grants from being seriously inconvenient or injurious to the people in general, or detrimental to the public service, is just and politic.

The discovery of a new art or manufacture is the result of labour and expense, and if exclusive property has any ethical foundation at all, its foundation is that universally admitted right, which every man is considered to have, to enjoy the fruits of his own ability and industry. The persons who argue against the justice of allowing inventors to have an exclusive right to the use of their inventions for a limited period, are generally misled either by a confusion of ideas or by ignorance of facts. The confusion of ideas to which we refer is caused by their recollection that modern patents are granted by virtue of a part of the prerogative of the Crown, which was retained by the Statute of Monopolies. They

remember the indefensible monopolies which were abolished, and then a false association of ideas, to which some minds are liable, causes them to call patents monopolies, and to think they must necessarily be condemned. The word monopoly has acquired a peculiar meaning. No one thinks of calling your property in the coat which you have bought with the result of your labour a monopoly; no one thinks of saying that your exclusive right to publish the book, which your genius and industry have created, is a monopoly; and yet directly the genius and industry of an inventor have been rewarded by the discovery of a new art or manufacture, for which he has obtained a patent, there are numbers of men who call his exclusive right to the use of his invention "a monopoly," and condemn it, without further consideration, as something which is necessarily unjust and indefensible.

Ignorance of facts, the other source of error to which we have alluded, is less excusable than the one just noticed. We are sometimes told by the press, and by persons with whom we come in contact, that inventions are bright ideas, which often occur to several men at about the same time, and that, in a country where there are patent laws, the inventor who is fortunate enough to arrive first at the Patent Office obtains the right to debar his fellow discoverers from the free use of their own inventions.

Now, any one who has even a slight acquaintance with the history of inventions is aware that, though the first idea of an invention has sometimes occurred to the inventor suddenly, its development and working out have only been accomplished by great labour and at great expense. Indeed, a little reflection on the subject, without any absolute historical knowledge, is sufficient to convince us that inventions are not brought to perfection without many fruitless experiments, and a large expenditure both of time and money. The first idea of the separate condenser occurred to Watt as he was walking across the College green at Glasgow. It was years before he succeeded in making a satisfactory steam engine on that principle.

It took many years more, and the labour and genius, not of one man, but of many men, to bring to perfection the wonderful machines which now drive our mills and draw us along our railways at the rate of forty-five or fifty miles an hour. That inventions are only brought to perfection by the labour of inventors, is a proposition so obviously true to every one who takes the trouble to reflect upon the subject, that we think it is unnecessary to support it by further examples and arguments. This being so, we believe that few men who realise it, will venture to argue that the laws of this country would be just, if they allowed the public to take the benefit of their inventions without paying for it. If our laws permitted this, they would have the effect of placing inventors—who must be admitted to be public benefactors—in a worse position than they would have been in if, instead of following the bent of their genius, and making valuable discoveries, they had wasted their time in idleness, or had devoted themselves to common-place employment. After spending their time and money in bringing their inventions to perfection, directly their industry and perseverance had made them valuable, inventors, under such laws, would be obliged to compete, in the use of their own inventions, with opponents who had reserved and accumulated their capital, instead of spending it in mechanical or scientific experiments, and who would consequently be in a position to work them to greater advantage than they could do, and to drive them out of the market.

It may, however, be said, that though the abolition of the patent laws would be a hardship to inventors, it would be an advantage to the public, and that the interests of individuals should be made to yield to the interests of the people at large. A further examination of this question will show us that, in addition to being unjust to inventors, the abolition of the patent laws would be highly impolitic. There are in this country a certain number of men possessed of those peculiar mental characteristics which constitute inventive genius, and it

is of the utmost consequence to the nation, that it shall have all the advantages which they can give it, by the most diligent exercise of their special abilities. In order that this may be the case, two things are necessary; (1.) Inventors must have sufficient inducement to make them devote themselves to the kind of labour for which nature has peculiarly fitted them; and (2.) The public must be quickly put in possession of accurate descriptions of their discoveries. We have something to say upon each of these points.

Under laws which allow inventors to protect their inventions by means of letters patent, every man of inventive genius is stimulated to use his abilities to the utmost of his power, in the hope that he will succeed in making a discovery which, when so protected, will enable him to realise a fortune. It is true that many inventors fail to gain the object of their desires; but it is also true that some of them succeed in doing so, and that all hope to be among the fortunate. Genius, however great it may be, can only be made effective in the production of useful results by means of continuous labour and self-denial, and these are seldom submitted to, unless circumstances provide an incentive to action in the hope of material gain. The hope of personal distinction is, no doubt, sufficient to stimulate some men of genius to the necessary diligence; but we must not forget that men so influenced must always be few in number, since they must belong to the very limited class of individuals in whom genius and great ambition co-exist with inherited wealth. Moreover, only a very small proportion of the useful inventions, by which the details of valuable machines are improved, and the public is benefited, bring sufficient distinction to the inventors to be any incentive to action to persons of the class in question. We must not, therefore, allow ourselves to be deluded by the hope of having the free use of such discoveries, as may be made by the very limited number of men, whose wealth and rare mental and moral qualities lead them to be diligent in following the bent of their genius, either for

the pleasure of doing so, or from the hope of achieving distinction. What we should seek to obtain is the highest development of which the inventive genius of the nation is capable; and if we are wise, we shall do our utmost to provide circumstances calculated to stimulate our inventors to activity, and to give them encouragement. We know of no way in which this can be better and more reasonably accomplished than by insuring to them the just reward of their labours, as far as this can be done by legislation. If the patent laws were entirely abolished, we think it is certain that a very large proportion of the inventive ability of the country would be at once devoted to more profitable employment than trying to make discoveries, which, if made, would at once become public property. Some men would, perhaps, still continue to invent, but the people would derive little benefit from their discoveries, for they would either leave them in a crude and useless state, as did the celebrated Marquis of Worcester, or they would take care to devote their attention to those branches of industry in which improvements are capable of being kept as trade secrets. In either of these events, the march of practical improvement, in many important arts and manufactures, would be retarded, if not altogether stopped.

Under our patent laws, a patent, as we have seen, is granted to an inventor on the express condition that he will, within six calendar months from the date of the grant, file a specification, accurately ascertaining and describing his invention, and the manner in which it is to be performed, in the Great Seal Patent Office. This specification is required to be sufficiently explicit to enable any workman of average capacity to understand it, and to make use of the invention, and it can be obtained at a moderate cost by any one who wishes to have it. Thus, on the expiration of the term of the patent, any man of average capacity who chooses to do so, can make use of the invention almost as easily as if he had himself been the inventor. If we were

to abolish the patent laws, an attempt would at once be made, by means of trade secrets, to make the exclusive use of inventions perpetual. This attempt might succeed or it might not. If it did succeed, the prices of articles produced by the trades which were successful in keeping their secrets would be permanently kept up, to the injury of all consumers. If it did not succeed, the secrets would generally be divulged by workmen, who, in many instances, would be unable to describe them with accuracy; and in those cases in which accurate descriptions were given, the secrets would not be likely to spread fast, for the persons who obtained them, having done so by the payment of heavy bribes, would, in their turn, guard them with the greatest care. The prices of commodities, produced under the limited competition which would be thus established, would be kept up for an indefinite period, and inventions which, under good patent laws, would soon have become the common property of the people at large, without them would remain the property of a few individuals, and would be used by them in extracting money from their customers, some of which, under the provisions of judicious patent laws, would certainly have remained in their pockets.

It has been suggested that inventions should be divided into two classes, the first class consisting of what may be called "great discoveries"; the second, of inventions of minor importance, and of improvements in the details and construction of machines already in common use; and that inventors who succeed in making discoveries of the first class, should be allowed to protect themselves by means of letters patent, but that such protection should be denied to those whose inventions come within the second class. In order to carry out this idea, it has been proposed, that it should be the duty of officers of the Crown to go into the merits of inventions submitted to them by applicants for protection, and to withhold letters patent from all inventors whose inventions are not considered by them of sufficient importance to be

ranked as first-class discoveries. We think a little reflection will show that any such attempt to classify inventions, or the exercise of any such discretionary power on the part of the officers of the Crown, would be a capital error. Nearly every machine of importance has been brought to its present state of perfection by means of the joint labours of a large number of independent inventors, each of whom has improved upon the discoveries and contrivances of his predecessors, sometimes by the addition of valuable details, sometimes by the application of superior principles of action.

In some instances these improvements have been so numerous and so important, that the machines of the original inventors are little more than foundations for the magnificent superstructures, which successive inventors have raised upon them for our use and admiration; and it cannot be doubted that the great incentive to the industry which produced these results, was the protection and encouragement afforded by our laws, to the inventors of improvements in the details of machines already in use.

If such protection and encouragement had not been given, we think it is certain that a very small proportion of the improvements in question would ever have been made, and that instead of having steam engines, and machines for the making of textile fabrics, which are the wonder of the world, we should have had little more than reproductions of the comparatively rude contrivances which are now preserved as curiosities at the museum of the Patent Office. The same incentive is still active in stimulating our inventors to the continual improvement of the various machines, upon which our individual comfort and our national greatness so largely depend, and we are convinced that it could not be withdrawn without most serious and prejudicial consequences to the one and to the other.

The refusal of the protection afforded by letters patent to inventors, whose inventions appeared to the officers of the Crown to be of minor importance, would not be productive of

such disastrous consequences, as the refusal of the like protection to the inventors of improvements in the details of machines already in use. We think, however, that the exercise of any such discretionary power, as to the granting or withholding of letters patent, should be condemned. It would have a most depressing effect upon the invention of articles, which, though not of first rate importance, are of great public utility, and in some instances, prejudice, and want of insight into the merits of the inventions submitted to them, on the part of the officers of the Crown, or of the skilled persons consulted by them, would lead to the repression of first rate discoveries. It is well known that many inventions, which have ultimately been proved to be of the greatest importance, have been condemned by men, whose opinions were treated with the greatest deference by the age in which they lived. Men who were, at the time, considered competent authorities, said that the propulsion of ships by means of steam could never be a commercial success; and the lighting of towns, by means of coal gas, was once pronounced to be an impossibility by a man who had achieved the greatest distinction in chemistry and science.

The most determined opposition of men who were honest, but who failed to appreciate its merits, and of men whose personal interests were adverse to its success, was the ordeal, through which nearly every great discovery had to pass, before its value was realised and admitted. This opposition was often so strong, and was supported by such a weight of authority, that only the enthusiasm of an inventor could have supplied the perseverance which ultimately conquered it, by such an exhibition of success, as an accomplished fact, that it could not any longer be doubted. It is true that inventors are often deluded by hopes which can never be realised, and are obliged to abandon, as impracticable and useless, the schemes upon which they have spent much time and money. Under laws, however, which allow letters patent to be obtained for any improvement in an art or manufacture, in

the utility of which the inventor has confidence, we have the best possible guarantee that no invention will be prematurely abandoned; for every invention, for which a patent has been taken, is sure to be tested, to the utmost of his ability to do so, by a man who has a direct interest in its success, and who is stimulated to attempt to overcome all obstacles, by a firm belief that he will ultimately succeed in overcoming them.

We have given a general outline of the origin and history of our patent laws, and have stated some of their principal provisions as they now exist; we also have made some observations on the justice and policy of laws, devised so as to allow every inventor to obtain a fair and reasonable reward for his ability and industry, without causing serious injury or inconvenience to the people in general, or to the public service. We shall now proceed to notice some amendments, by which we think our patent laws may be made more conducive to this end; and the first point to which we shall direct our attention, is the machinery by which they are administered. The Commissioners of Patents for Inventions are the Lord Chancellor, the Master of the Rolls, Her Majesty's Attorney-General for *England*, Her Majesty's Solicitor-General for *England*, the Lord Advocate, Her Majesty's Solicitor-General for *Scotland*, Her Majesty's Attorney-General for *Ireland*, and Her Majesty's Solicitor-General for *Ireland*, for the time being respectively, together with other persons appointed by Her Majesty. To the Lord Chancellor and the Commissioners of Patents is intrusted the administration of that part of the patent law which relates to the granting of letters patent for inventions, while questions respecting rights and liabilities under the patents, after they have been granted, are determined by the ordinary Courts of Law and Equity. A glance at the titles of these officials is sufficient to show us that they are not likely to have any special qualifications for the administration of this branch of the patent law. We are also aware, that the time of the Law Officers of the Crown is

so fully occupied by other business, that it is impossible for them to devote proper attention to the specifications referred to them, and we come to the conclusion that this part of the public service must, necessarily, be conducted in a careless and inefficient manner. This is, in fact, the case, and yet the cost of maintaining it is so great, that if the money were more judiciously applied, in addition to paying for the administration of that part of the patent law now under our consideration, in a much more efficient manner than it is now administered, it would be sufficient to enable us to provide a special court for the trial of all questions respecting patent rights, to the great relief of the ordinary courts of the country, and to the great advantage of patentees, and of all persons having interests under patents.

The above considerations are sufficient to show us, that our first step in Patent Law Reform should be to enact, that the Lord Chancellor, the Master of the Rolls, Her Majesty's Attorney-General for *England*, Her Majesty's Solicitor-General for *England*, the Lord Advocate, Her Majesty's Solicitor-General for *Scotland*, Her Majesty's Attorney-General for *Ireland*, and Her Majesty's Solicitor-General for *Ireland*, for the time being respectively, together with all other persons who are now Commissioners of Patents for Inventions, shall cease to be such Commissioners, and that the ordinary Courts of Law and Equity shall cease to have jurisdiction in cases involving the consideration of patent rights. The ground having been thus cleared, our next step should be the establishment of a system of patent law administration of such efficiency, that it would be of real service, both to inventors and to the public. In order to accomplish this, we propose that a sufficient number of men should be selected for their special fitness for the duties which they would have to discharge, and that they should be appointed Commissioners of Patents for Inventions, and also Judges of a Patent Court, which should be established

for the trial of all causes involving the consideration of patent rights. It would not be difficult to find men, who would be both willing and well qualified to undertake the administration of the patent laws in all their departments, and the services of a sufficient number of such men should be secured for this purpose. To these officers, who would be both Commissioners of Patents for Inventions and Judges of the Patent Court, should be handed over the entire administration of the law of patents, and they should be given exclusive jurisdiction in all questions arising under it. The granting of letters patent for inventions, and the determination of disputes respecting them after they had been granted, would thus belong to one department of the public service, and would be under the administration of one set of officials, and we think that this concentration of jurisdiction and authority would be both advantageous and economical. As Commissioners of Patents, these officials should be charged with the duty of examining applications for patent rights, and of granting letters patent, and they should be provided with a seal with which letters patent should be sealed instead of with the Great Seal. As judges of the Patent Court they should, in cases within their jurisdiction, have all the powers now exercised by the judges of the Superior Courts, both of Law and Equity; they would then have concentrated in themselves all the powers necessary to enable them to do complete justice between the parties coming before them.

Each case should be tried by a single judge in the first instance; from his decision an appeal should lie to the full Court, and the decision of the full Court should be final. Trial by jury should be abolished in all cases within the jurisdiction of the Patent Court, questions both of law and of fact, in the cases coming before them, being determined by its judges alone. We should then cease to commit the absurdity of charging any twelve men who chance to be called into the jury box with the determination of questions, which can only be fully understood by persons who have had

a special training, and who have peculiar mental characteristics. For the purposes of patent law administration, the United Kingdom should be divided into districts, and a judge of the Patent Court should sit, at fixed intervals, in some central town in each district, and should try all causes which had arisen therein.

The next point to which we shall direct our attention, is the employment of what are called "skilled witnesses." Witnesses of this kind, in addition to deposing to facts within their knowledge, are allowed to give their opinions on points respecting the matter in dispute, as to which they are considered to be skilled, and their employment is, in our opinion, the great curse of modern litigation. We say this advisedly, for it is well known that scarcely any case is so desperate that witnesses of this character, and sometimes men of eminence, cannot be retained to give evidence in support of it, to the great cost of the parties, and at the risk of a failure of justice. Sometimes an arbitrator who has listened for days to the examination, cross-examination, and re-examination of the skilled witnesses produced by the parties, is at last reduced to such a state of doubt and perplexity by their swearing and counter-swearing, that he finds it necessary to take the opinion of a man of his own selection, who is skilled as to the matter in dispute. When this occurs, the arbitrator is of course guided in coming to his decision by the opinion which he has thus obtained, since it is the only opinion before him which has not been given by a partisan, brought forward and paid to support a particular view of the case; the opinions expressed by the skilled witnesses called by the parties are entirely disregarded by him, and much time and money is wasted, which might have been profitably employed in some other way, if the expression of such opinions had been prohibited, and the arbitrator had done at first what he was compelled to do at last. The above example of what sometimes happens in arbitration cases, both illustrates the evil which we are now considering, and suggests its remedy.

In the Patent Court, and in all courts for the trial of civil cases, the witnesses called by the parties should be required to depose to facts within their knowledge alone, and should not be allowed, under any circumstances, to give their opinions respecting the points in dispute. If, however, either of the parties was anxious to have the opinion of a skilled witness given at the trial of his cause, it should be open to him to apply to the Court or to a judge at chambers, to appoint one. If satisfied that it would be necessary or desirable that the opinion of a witness, who was skilled as to the matter in dispute, should be given in evidence at the trial of the case, the Court or judge so applied to, should have power to grant the application, and to select and to appoint one or more such witnesses to attend for that purpose, every witness, so selected and appointed, being considered to act as an officer of the Court, and being entirely independent of both the parties. In cases where a view was required, the parties or their agents should be allowed to accompany the witness or witnesses to take it, in order to point out the matters to which they thought attention ought to be directed. At the time and place appointed for that purpose, the witness or witnesses should appear, and should give evidence when required by the Court to do so; the counsel of either party to the cause having a right to cross-examine each skilled witness, in order to ascertain whether he had duly considered all things necessary to be considered in forming a sound and reliable opinion. If this cross-examination showed that any skilled witness had overlooked some points to which he ought to have directed his attention, the Court should have power, either to remit the case back to him for further consideration, or to select and appoint one or more additional skilled witnesses to consider the matter on which information was required, and to give evidence respecting it.

When an action is brought for the infringement of patent rights, the defendant is allowed to dispute the validity of the

plaintiff's patent, if he give him notice of his intention to do so. In this notice the defendant must give explicit information as to the objections to its validity upon which he intends to rely, and if at the trial of the cause he succeed in establishing any of them, the plaintiff is defeated in his action and has to pay the costs. Now, though the plaintiff may thus be defeated in his action for infringement, on the ground that his patent is invalid and ought to be cancelled, it does not thereby become void; for, as our law now stands, a patent does not become void, until it has been declared to be so in a suit brought expressly to try the validity of the grant. The legal proceeding required by our law for this purpose is prosecuted in the name of the Queen, and is called a writ of *scire facias*. Any person may petition Her Majesty to direct a writ of *scire facias* to try the validity of a patent, and the petitioner who puts the law in motion is liable for the costs of prosecuting the writ, and is also required to give a bond to secure the patentee's costs in the event of its failure. The evidence required in a proceeding of this kind is similar to that which is required in an ordinary action for infringement, in which the validity of the patent is disputed, and if the verdict is for the Crown, the patent is void and the Court orders it to be cancelled. Now the interests of the public demand, that patents which ought to be cancelled shall be cancelled as speedily as possible, so that all persons wishing to make use of the arts and manufactures described in the specifications, may know that they are at liberty to do so. In order to protect these interests, we propose that it shall be the duty of any judge of the Patent Court who tries an action for infringement, in which the validity of the patent is disputed, to order it to be cancelled, if it be proved to his satisfaction that it ought to be cancelled, sufficient time, however, being allowed for an appeal to the full Court, between the date of his order and the date fixed for its execution.

There are many other particulars in which our patent laws require to be simplified and otherwise improved, but we are

obliged to leave them unnoticed, and we regret that we have been unable to give more than mere outlines of the few amendments which the space at our disposal has allowed us to suggest; we must leave our readers to supplement these outlines by their own knowledge and reflection.

ART. II.—DIGESTS AND CODES.

A Letter to the Lord Chancellor concerning Digests and Codes.

By W. R. FISHER, of Lincoln's Inn, Barrister-at-Law.
London: Butterworths. 1870.

WE need no apology for calling the attention of our readers to the above-named publication. Mr. Fisher has an especial right to put forward his views upon the subject indicated, not only by virtue of his position as one of the foremost text-writers of the day, but yet more because he is one of those who were selected by the Digest Commissioners to prepare a specimen Digest under their supervision.

Possibly our readers may not remember the precise position of the question at the present moment. The Law Digest Commission made their first Report in 1867. Thereby they declared their opinion that the construction of a Digest was desirable: and further advised that, as a preliminary and experimental step, a portion of the contemplated Digest, sufficient in extent to be a fair specimen of the whole, should be in the first instance prepared. In conformity with these recommendations, three several branches of the law were selected to form the subjects of specimen Digests. These specimen Digests were to be constructed under the supervision of the Commissioners by gentlemen nominated by them, and were designed to precede the actual commencement of the task of preparing an entire Digest of the Law.

Mr. Fisher was selected to construct one of these specimen Digests, the subject committed to his charge being the Law of Mortgage and Lien. Upon this task Mr. Fisher was engaged for some time, and it is understood that a considerable portion of the work has been completed. In the present year, however, the Commissioners have made another Report. Therein they state, that although the specimen Digests are not yet complete, the task has already served its purpose by enabling the Commissioners to form conclusions as to the conduct of the entire work. They therefore recommend "that the work of a general Digest, based on a comprehensive plan, and with a uniform method, should be at once undertaken," and that it should be carried on under the supervision of a permanent board of professional men of the highest skill, whose whole time should be given to the task, and who should be highly remunerated. The specimen Digests, so far as already complete, would be available as materials for the construction of the entire work.

From this Report Mr. Justice Willes dissents. His Lordship states his opinion to be that a Digest would after all be only a make-shift for a Code, and advises that, instead of a Digest, the construction of a Code should be immediately commenced.

Hereupon comes Mr. Fisher's letter. He addresses himself especially to the views expressed by Mr. Justice Willes, and shared with him by many others. Mr. Fisher endeavours to show that these views are erroneous. His contention is that the completion and publication of a Digest should precede any attempt directly to form a Code. Not that he is in any way opposed to codification; on the contrary, he agrees with Mr. Justice Willes in regarding a Code as the ultimate object to be aimed at, but he prefers to approach it through and by means of a Digest, in preference to attacking it at once.*

* Mr. Austin appears to have been of the same opinion. See his collected works, Vol. III., pp. 279, 281, *et seq.*

He, therefore, upholds the opinion of the majority of the Commissioners upon this point, as against that of Mr. Justice Willes. Mr. Fisher contends with great force that the compilation of a Digest will give opportunity and time for the acquisition of experience; that upon the publication of the Digest, errors and imperfections in the work will be detected and removed with comparative ease. The more serious defects and contradictions in our law will then be clearly seen, and may be corrected by the Legislature, the jarring systems of Law and Equity fused, and all things prepared for the introduction of a perfect exposition of the law. The construction of a Code will then be a matter of comparative ease, for not only will the completed Digest serve as the foundation of the Code, but its very language will in most cases be transferred directly into the pages of the Code. At the same time all imperfections which may have been detected in the Digest will be carefully avoided. Not only will the Code, under such circumstances, be constructed with ease, there will also be all reasonable certainty that the work will be well done, and that the Code, when it at length appears, will be a good one. If, on the other hand, an attempt be made to construct a Code directly without the intervention of a Digest, Mr. Fisher obviously fears that the work may be characterised by serious imperfections. The latter was the course adopted in the case of the (so-called) Codes of New York. Upon these we have lately commented (see our previous numbers for August and November, 1869, and for May, 1870), and we observe, with some satisfaction, that Mr. Fisher's estimate of their value agrees with our own. He, like ourselves, is compelled to regard them rather as wrecks to be avoided, than as examples to be imitated.

In the opening pages of his letter, Mr. Fisher is confronted by the question—what is meant by the terms “Code” and “Digest?” We ourselves have often been met by the same difficulty, and could verily wish that the respective

terms were defined by Act of Parliament, or in some other authoritative manner, for by no other means can we venture to hope for the removal of the ambiguity which now besets them. Mr. Fisher is too cautious—perhaps too wise—to attempt a *definition* of the terms. He gives, however, an explanation of the sense in which he himself uses them; and this explanation is worth attention, inasmuch as it shows that the Digest which Mr. Fisher contemplates is something very different from that which many persons understand to be meant by the term. Mr. Fisher first adverts to the ordinary conception of a Digest and a Code as “bodies of law which depend respectively upon external and internal authority.” This idea he notices only in order to repudiate it. A Digest, in his conception of the term, is none the less a Digest because it is authoritative. Indeed, he afterwards proposes that the future Digest of the English law shall itself receive a legislative sanction. He next proceeds to repudiate the idea that a Code is any the less a Code because it is drawn from previously existing law. “A Code, like a Digest,” says Mr. Fisher, p. 4, “is a condensed body of law; and if, like a Digest, it be also a condensed summary of existing law, it is not the less a Code, although, as in the case of Justinian’s Code, it may be supported by references, and illustrated by citations.” The true distinction between the terms lies in their respective origin. “Although the word Code may properly be applied to any body of condensed law, the use of the word Digest is more limited. A Code may be the mere creation of its framer, or may be made by collecting, arranging, and condensing laws which already existed; but a Digest—that is, a pure and simple Digest—can be made in the latter way only.”

The Code contemplated by Mr. Justice Willes is presumed to be “a Code which shall be not merely a concise summary of the English law as it exists” (this would be a Digest), “but which, being purged from all conflicts and inaccuracies,

including the conflicts of Law and Equity, and enriched with such improvements from foreign laws and other sources as the wisdom and experience of its framers may devise, shall form a body of law thoroughly adapted to the habits and transactions of the English people, and as perfect as skill and learning can make it." Mr. Fisher, like Mr. Justice Willes, looks forward to the construction of such a Code as the ultimate end to be reached, but he desires, as we have already seen, to proceed by steps, and to complete a Digest before directly commencing a Code.

Mr. Fisher proceeds to contend that the contemplated Digest should not be confined to a statement of the principal propositions of law, but should also contain the minor rules by which those propositions are explained; in fact, that it should constitute a complete exposition of the *whole* of the existing law. In this recommendation we entirely concur. Anything short of this would be a skeleton, useless to the practitioner, and calculated rather to mislead than to guide the layman. Mr. Fisher is most anxious to combat the objection that a Digest composed upon these principles would necessarily swell to an unwieldy size. He entreats us to remember that compression, if carried beyond its due limits, will deprive the work of all practical value; and labours, by a variety of calculations, to show that the size of such a work would certainly not exceed twelve octavo volumes, and might probably be comprised within nine or ten. We see no reason to question the correctness of the calculation; but why this extreme anxiety about smallness of size? By all means let us reject everything which is redundant or superfluous. But when these are omitted, why labour for the reduction of the residue? A Digest is designed to be a complete exposition and representation of the law. If it is less than this, it falls short of the first end of its existence. If then the existing law does not admit of complete exposition and representation, except at considerable length, it may be a misfortune, but it is one to which we must submit, as

we do to a long drought. To secure brevity at the expense of utility would be an act of madness. "Brevity is of no importance, except as it tends to perspicuity and accessibility," says Mr. Austin (Vol. III., p. 292), and we commend his words to the attention of those legal reformers with whom Mr. Fisher contends, and who seem to think that the first of all qualifications in a Code is, that it should be short. They might as well say, that the first of all qualifications in a map is, that it should be small.

Finally, Mr. Fisher considers the question of the authentication of the Digest when completed. Upon this point he proposes that the sanction of the Legislature should be conferred upon the Digest, and that it should become substantive law.

This is Mr. Fisher's plan. Mr. Justice Willes, on the other hand, wishes to draw up a Code at once, omitting any intermediate stage. This course would save some trouble, and (possibly) some time. It is the bolder, but at the same time the more hazardous, step. We may point out one objection to immediate codification, which is not mentioned by Mr. Fisher. According to Mr. Fisher's scheme, the various organic changes in the law, which are contemplated by all, and of which the fusion of Law and Equity is the chief, will be made gradually, and one by one. They will also be kept distinct from the introduction of the (authoritative) Digest, a step which must necessarily constitute in itself a sweeping innovation. According to the plan of Mr. Justice Willes, all these changes, organic as well as formal, will be made simultaneously by the enactment of a Code—they must be swallowed in one huge gulp. It may be doubted whether the Parliamentary gullet is sufficient for the effort. It would be painful to see the Code, when at last complete, lying unheeded for years on the table of the Legislature—a fate which has already befallen the kindred Codes of New York.

But, perhaps, the most interesting portion of Mr. Fisher's

letter is the Appendix. This contains a specimen of the Digest contemplated by Mr. Fisher. We imagine that we are not wrong in supposing that the extract in question is drawn from the completed portion of the specimen Digest, prepared by Mr. Fisher himself under the auspices of the Digest Commission. It possesses, therefore, especial interest as a sample of the work in hand. As such we hail it as of happy augury. It strikes us as a most skilful and masterly production—one of the best pieces of work of the kind that we have seen, whether of home or foreign manufacture.

Our readers will naturally desire to judge for themselves upon this point; and we cannot conclude our remarks better than by extracting the first few sections of the Appendix in question.

Division IV.—Liens.

Nature of Lien.—122. A lien is an obligation which, by implication of law, and not by contract, binds real or personal estate for the discharge of a debt or engagement; but does not pass the property in the subject of the lien.

Contract excludes Lien.—An express contract for a lien excludes such a lien as, but for the contract, might have arisen by force of law, 64.

123. Liens are *possessory or non-possessory*.

Subdivision 1.—Possessory Liens.

Nature of Possessory Lien.—124. Possessory liens bind personal chattels of the debtor by virtue of, and during the possession thereof by the creditor; without which, subject to the qualification in Article 137, they are not valid either at Law or in Equity.

Effect of Lien upon Money.—The possessory lien upon money, as distinguished from the lien upon other personal chattels, is divisible, and only extends to so much of it as equals the amount of the debt due to the holder.

Lien supports Action at Law.—The right of possession, conferred by a possessory lien, is sufficient to support an action at law, founded upon an alleged ownership in the person claiming the lien.

125. The possession will not support the lien.

When Possession will not support Lien.—(1.) If it were obtained without authority, or by fraud, misrepresentation, or other wrongful act, even though the holder of the chattels has made advances on the faith of the owner's promise to consign them to him.

(2.) If it were given casually, and not in the course of business, or for safe custody, or for any other special purpose, or by a mere trustee or person not entitled to the absolute ownership of the chattel.

The lien may arise, if, upon failure of the special purpose, the chattel be allowed to remain in the hands of the deposittee.

(3.) If it be subject to a right of use or control by the owner of the chattel.

This rule excludes from the right of possessory lien:—

The agister of cattle in respect of the price of the agistment;

The stablekeeper in respect of the keep of horses, or of labour or cost bestowed upon them, although at the owner's request;

But not the innkeeper in respect of the like charges, because he is bound to receive the horses—140.

ART. III.—THE ADMINISTRATION OF JUSTICE IN INDIA.—No. II.

IN a former article on this subject * we showed what was the nature of the justice administered in the Subordinate Courts in India. We come now to the District or

* Vol. XXIX., p. 331.

Zillah Courts. These Courts, as we have already pointed out, are practically only Appellate Courts, almost all the original jurisdiction having been made over to the Subordinate Courts. With such Courts as the present Subordinate Courts for the trial of the original suits, no system of Appellate Courts, however learned the judges, or however able the Bar, could effect anything like a pure administration of justice in India. What possible advantage can be derived from an appeal when (to use, not the words of a mere outsider, but the well considered and judicial language of the judges themselves *) judges of these original courts utterly disregard the law, when notes of evidence taken by them are a disgraceful farce, when such a thing as a trial in the proper sense of the word is unknown, and when the record is one chaotic heap, consisting of a mass of matter having no more bearing on the law suit which it purports to be than to an adultery case of the day before?

How chaotic this mass of irrelevant matter is may be understood from the fact that, to prepare an appeal for hearing by the Judicial Committee of the Privy Council, it requires at least four years to allow the clerks and translators and parties time to sift the wheat from the chaff, and translate the papers which bear on the case; and after all, even with this four years' sifting, their lordships constantly complain of "the frequent inclusion of voluminous papers, accounts, and receipts in the transcripts printed in India, and sent over in that form to the Registry of the Privy Council, an evil which appears to be on the increase."

The duty of a Court of Appeal is to correct the mistakes of the court that tries the case, but what is to be done when the whole record in a case of any difficulty contains nothing but mistakes? The plaint does not show distinctly what the plaintiff claims, nor does the answer show what it

* Morley's Digest.

is that the defendant takes objection to, or what it is that he admits, while the issues, which it is the duty of the judge in India to ascertain, are probably directed to points altogether irrelevant, and the evidence is for the most part inadmissible and seldom or never connected with the actual issues.

The whole trial is in fact so bad that there would be only one conclusion in England, in every case, and that would be an order for a fresh trial. But suppose the judges were hearing an appeal in an Indian District Court, would they feel justified in ordering a new trial, "a second representation of the disgraceful farce, a second series of those gambling matches where parties try their strength, and the most wicked and cunning gain the day."

No doubt if the Appellate Courts are not fit to perform the work entrusted to them, the enormous evil caused by the utter rottenness of the original trial would be greatly increased. There can, we think, be little doubt that the Appellate Courts are not so fit as they ought to be. Not only have the Native Judges unlimited original jurisdiction, but they have practically unlimited appellate jurisdiction, and in Bengal they actually try half the whole number of appeals filed. We wish now, however, to refer more particularly to the European Judges of the Appellate Courts. These judges are undoubtedly also very inefficient. In the first place, the principle of granting an appeal from one single judge to another single judge is, we think, erroneous. If the Appellate Judge should differ from the judge who tried the case, it is merely the opinion of one man against the opinion of another, and in regard at least to the points of fact, the judge who tried the case is by far the most likely to give a correct opinion. No judgment of any court should be liable to be reversed unless two judges at least concur in thinking it erroneous. The next point in the constitution of the Appellate Courts which is altogether faulty is, that throughout India the Europeans who are ap-

pointed to preside over them have had no experience in the trial of original suits. In Bombay a young civilian, two years after his arrival in the country, is at once appointed an Assistant Zillah Judge, with jurisdiction to hear appeals from men who have spent their lives in the administration of justice in India. In Bengal it is worse. There civilians who have spent the best part of their service as tax-gatherers are late in life promoted to the judicial office. But the great blot on the present system is, that the two years of probation in England, which a civilian passes before proceeding to India, are, although not absolutely wasted, yet not employed, as advantageously they might be, in preparing him for his duties in India. The *curriculum* wants revising, and, above all, the doctrine that by reading a few law books and attending a few trials, one half of the procedure in which is utterly unintelligible to him, the young civilian can *ipso facto* become a lawyer, must be relegated to the obscurity it deserves. One-third of the probationers at present work honestly for their half-yearly examinations, the other two-thirds cram for a fortnight previous to each examination, and the majority of them succeed in passing muster. Those who do not are fined, but although they cannot satisfy the examiners, they find their way to India in due time in spite of their failures. Occasionally the Civil Service Commissioners display a spasmodic vigilance, and pluck a few unhappy wights, who, relying on the fact that so many before them have crammed their way through their time of probation, attempt to travel by the same royal road. In a word, cram is the curse of the training of the young Castilians.

Notwithstanding, however, the disadvantages under which the European judges labour, they are undoubtedly better judges than the present Native Judges, even from the first day they take their seat on the Bench, ignorant as they may be of the law, and even of the language in use in their Court, inasmuch as they are civilised and educated human beings, whereas there is scarcely one of the Native Judges that has

received any education at all. They have usually a knowledge of the three R's, and smattering of the technical rules of Indian law, but anything like a liberal education or a knowledge of the universal principles of Jurisprudence is not possessed by one in a hundred of the present Native Judges.

A writer in the *Edinburgh Review* has suggested, as a remedy for the admitted evils of the Indian judicial system, that more natives should be appointed to the Bench than at present.* This seems to us not to touch the real root of the disease. There is even strong ground for doubting whether to carry out the recommendation would not be to make the evil worse than it has ever been before. Whether the main cause of the injustice, now administered in the Indian Courts, is that the administrators of that justice are natives or not, one thing is clear that, in the only place where Europeans do the whole, or nearly the whole, of the judicial business, including the work of the Bar and of the officers of the Court, justice is admitted by all classes to be better administered than it is where the whole of the Bar, the whole of the officers of the Court, the whole of the Judges of Original Jurisdiction, and half of those of Appellate Jurisdiction are natives. The civil justice administered in presidency towns may be said to be European justice, while Mofussil justice may be said to be Indian justice. We do not say, and, in fact, we do not believe, that it is because Mofussil justice is administered by Native Judges that it is notorious; but we do say that a remedy, which proposes merely to add to the already existing ninety-nine judicial offices held by natives, the one solitary office that has gone astray into the hands of a European is one which can have very little practical results. We do not use these figures in any but their natural sense. That ninety-nine out of every hundred judicial offices are held by natives in the Mofussil is rather an under-estimate than

* Article "Indian Judges—British and Native."

otherwise. One defect of the proposition made by the writer in the *Edinburgh Review* is, that it is limited to improvement of the Bench, and only an infinitesimal portion of that, while it leaves the Bar and the whole of the ministerial officers as before. To us it seems that both in the Native Courts and in the European Courts it is the Bar and the Subordinate officers that most urgently call for reform. The Bench, bad as it is, is not so bad as either of these other, and we would say, equally important, branches of judicial administration.

The question as to what are the best men for Indian judges seems to us a comparatively subordinate one. Some say that English barristers alone should be appointed; others prefer civilians, and others again think natives the best judges that can be procured. Our opinion is that good judges and sound lawyers may be found in each of these classes. It is equally true, however, that each of them contains members whom it would be a disgrace to any government to appoint to a high judicial office. There are briefless barristers, whose sole qualifications consist in having eaten a certain number of dinners. There are many men also practising at the English Bar who, at least under the present judicial system, are no lawyers. They have a one-sided view of the law administered in courts of law, but have no idea of the connection of the partial knowledge they have with general jurisprudence. The judicature and justice administered in the one class of courts is, in the words of Lord Westbury, a *terra incognita* to the practitioners in the other. Men of this stamp would never do for an Indian court. Another objection to barristers is their astonishing ignorance of Indian languages, even after years of residence. In the presidency towns the courts have committed the enormous wrong of forcing a foreign language on all the suitors who come before them; but in the interior the language of the courts is still the language of the country, and it is to be hoped that it will long con-

tinue to be so, at least to such an extent that the parties shall know how their cause is being tried.

As to the covenanted civilians, those men who have spent the greater part of their service in other than judicial work, they are of course utterly unfit to be made judges. This has been admitted on all sides, and for the last fifty years writers of all shades of opinion have been demanding that a reform should be made, by creating a judicial department of the service. The civil servants themselves have been as persistent in their assertions of the necessity of this reform as any other body of men. Public-spirited natives have again and again brought this question into prominent notice, and yet, strange to say, nothing has yet been done.

The qualifications in the civilian, which point him out as most suited for judicial work in India, are, that the legal training which he is supposed to undergo before he leaves England, is one in which the general principles of jurisprudence are made of greater importance than the technical and purely local and arbitrary distinctions of either English or any other law, while attention is also given to the positive provisions of the Hindoo and Mahomedan legal systems. Another point in his favour is, that by coming to the country early, he acquires a more intimate acquaintance with the language and manners of the people than it is possible for any man to reach who has never come to India till late in life. The benefit of knowing the language of the country is, however, under the present *régime* often done away with. Rather than interfere with the sacred rule of promotion by seniority, it is not uncommon for the same judge to preside in the same year over courts as distant from each other, and differing as much in their language as if, to take a European example, a French judge were transferred, say for two months to Liverpool, four to Berlin, and six to St. Petersburg or Madrid. Most civilians know tolerably well two or three Indian languages, but it is hardly possible for any one man to know all these languages as intimately

as is absolutely necessary for the administration of justice in India. To do this, the judge should know the language as thoroughly as he knows his own, and this can only be done by confining the judge to one country and one language during his service. From the circumstance that the European judges are only Judges of Appeal, it is impossible to compare their work with that of other courts, either in India or elsewhere.

In Bombay there is a judicial branch of the service which is kept for the most part distinct from the revenue. These, too, in a very limited number of cases, the District Judges have original jurisdiction. These cases are actions against the Government and its officers acting in their official capacity. The questions that arise in these suits are well known to be the most important, difficult, and complicated, that ever come before courts of justice, involving, as they do, the respective rights and liabilities of the subject and the sovereign power.

A reference to the reports shows that in India they are certainly not less difficult than petitions of right are in England. The last Administration Report of the Bombay Presidency gives a return of these cases. We find from it that out of 393 appealable judgments passed by Assistant Zillah Judges, five were reversed, four modified, and five remanded for re-trial; altogether only 2·29 per cent. of these decisions were altered. We believe that this will compare favourably not only with Indian cases in other Mofussil Courts, but even with the decisions of barrister judges in the High Courts, who have about five times the salary of an Assistant Judge. From the same report we find that out of 469 appealable judgments passed by these barrister judges, twenty-five appeals were made. How many of these appeals were successful in whole or in part is not stated, but unless the parties were very badly advised, it is to be presumed that nearly one-half would succeed. This would give about $2\frac{1}{2}$ per cent., and as the majority of the High Court cases are mere money claims for goods sold, or on promissory notes and such simple matters, such cases, in

fact, as are likely to arise in a City Court, the result does not show any very marked superiority on the part of the High Court Judges, especially when it is considered that the Assistant Judges are young men, and new to their work, and have neither the assistance of a Bar nor of competent officers.

If we compare this with work of exactly the same description performed by Native Judges, the result is equally favourable. The only return of such cases which we have been able to procure is that of the Remembrancer of Legal Affairs to the Bengal Government, containing a Report for two years, 1866-67 and 1867-68. In the first year the number of cases was 305, out of which 28, or 9·1 per cent., were reversed on appeal. In the second year there were 435 cases, out of which no less than 77, or 17·7 per cent., were reversed. This does not include the cases remanded for re-trial. The whole of these trials are not by Native Judges, but it is believed that the great majority were tried by them, as they alone have jurisdiction to receive the case originally, and it is only when a special order is made to transfer the suit that a European judge can try it. These facts seem to bear out the opinion expressed by one of the most learned barrister judges who ever came to India, and who was not likely to have a prejudice in favour of civilian judges. We refer to Sir Joseph Arnould, one of the Judges of the High Court of Bombay. The following was what was said by him in reply to the toast of the Bench and the Bar, at the dinner given by the Byculla Club to Sir Bartle Frere, on the occasion of his retiring from the Governorship of Bombay. The toast of the Bench and the Bar had, till then, uniformly been treated in India as applicable only to the judges and barristers in the City Courts of Calcutta, Madras, or Bombay. The existence of any other Bench or any other Bar in India was invariably ignored, both in proposing and replying to the toast. There was, therefore, nothing in the nature of the toast which, in

the ordinary course of things, called for such a eulogy as Sir Joseph went out of his way to make.

"I am," he said, "one of those who think that the amalgamation of the Courts has been a great and a decided success. It has in every way been beneficial. It has done much towards the extinction of old class prejudices, and has decidedly tended to improve the administration of justice in the Mofussil. The barrister judge who sits on the appellate side of the High Court learns to respect the legal acquirements of his learned civilian colleagues; to the young civilians themselves the position of a High Court Judge presents greater attraction than the position of a Sudder Judge did formerly. The feeling of the service itself, with regard to the judicial office and functions, has lately undergone a considerable change for the better. The old implicit belief of the Civil Service—the rooted conviction that *ex quovis ligno fit judex*—if not altogether abandoned (it would be too sanguine, perhaps, to expect this) has, at all events, been very considerably mitigated. Some of the ablest members of the Service have cultivated with successful zeal the science of jurisprudence, some of the more promising among the young civilians have given fuller intimation that, as far as the exigencies of the service admit, they desire to be regarded as candidates, rather for its judicial than for its administrative branch. Under these circumstances, it is to be hoped we have almost heard the last of the old-class cry, of trained against untrained judges, which was once so much too common. I never could in any way join in that cry; it always seemed to me so ungenerous and unjust. What, in fact, could be more unfair than a comparison between the barrister judges of the presidency towns, with all the appliances that a centralised administration of justice placed at their command, and the civilian judges of the Mofussil, left to grope their way through masses of native documents and labyrinths of native testimony, without the aid of skilled interpreters and translators, above all, without the inestimable advantage of a trained Bar, a body of men too honourable to misstate or mislead, too learned not to throw all the light that can be devised from established principles and recorded decisions on the point submitted for judicial determination, and now I want His Excellency (Sir Bartle Frere) to

take with him across the *Kala panee* a sentiment which I will pack up into small compass for convenient exportation, and it is this—*No class of young men can be imported from England better fitted for the successful administration of justice in the Mofussil than the class of civilians who are now coming out to us ; young men well grounded in general principles of jurisprudence, completely versed in the vernaculars, ready, so far as the exigencies of the service will permit, to devote themselves exclusively to a judicial career.* I want His Excellency to carry that opinion home with him to be slung, as occasion may serve, against that redoubtable Goliath of the trained barrister interest, my honourable and learned predecessor, Sir Erskine Parry. With this great change for the better in the feelings of the civilians towards the judicial branch of the service, with the prospect that before three years are over our presidency Bar will be reinforced, by the admission into its ranks of the picked men among the law graduates of the University with, what I hope may soon be realized, the permanent promotion of a Native Judge to the Bench of the High Court, I feel confident that the Bench and the Bar in India will not, in the future, be less deserving than you are pleased to think them now.”

The writer of the article in the *Edinburgh Review* is said by the Indian papers to be a barrister judge of the Calcutta High Court.* Whether the writer is a barrister judge or not, he is evidently one of those who think that no man can well be a lawyer unless he has been a barrister. It is necessary that such men should be reminded that England stands almost alone of all countries in the world in respect of recruiting its Bench from the Bar. The judges over the greater part of the continent of Europe have never practised at the Bar, and many of them hold as high positions in the opinion of the world as juriconsults as any judge that ever sat on the Bench. At any rate it cannot be said of them as was said only the other day

* The mistakes contained in the article are just such mistakes as a barrister judge who had never been in the Mofussil was likely to make. “By far the largest proportion of judges in India are,” he says, “covenanted civilians.” The real truth being that there are nine Native Judges to one Civilian Judge. He has also mistaken the jurisdiction of a District Judge.

in Parliament by Lord Westbury of the judges of England, "that the judicature and justice in one class of courts was a *terra incognita* to the practitioners in the other, and that the same was the case in respect to the judges."

As to the qualifications of natives for the Bench, what we have stated in the foregoing portions of this article may appear to favour the opinion that they are not suitable. We wish it to be distinctly understood that such is not our opinion. What we have been hitherto speaking of was a certain class of natives who till now have held a monopoly of judicial appointments. That class consisted for the most part of men who had risen gradually through the various offices of the courts, from copyist up to a judge's clerk. In one case where an inquiry seems to have been made, it appeared that of six judges in the district five had previously been clerks in the District Court and four were Sheristedars (judge's clerks) at the time of their appointments.* But whether the judges were formerly mere clerks or not, until very recently no education whatever was required. In fact the salary was so small that Government had to appoint not the best men, but any men they could get. It is impossible to doubt that the natives of India are not only fit for judicial work, but that they have a remarkable aptitude for the discussion and solution of doubtful points of law. Many native members of the Bar practising in the various High Courts would take a high place anywhere for thorough acquaintance with the principles of jurisprudence, for sound learning, and high attainments of every description. The command which many of them have attained over the English language is truly wonderful. They are in the daily habit of addressing the Court hour after hour in a language which to them is foreign, but which they speak with perfect diction, and entire freedom from solecism. So complete and precise is the knowledge of the language, and so perfect is the accent of many a High Court pleader,

* Bombay Circular. Order No. 2193 of 1843.

that but for the colour of his face and the dress he wears, it would be impossible to say that it was not an English barrister who was addressing the Court.

Such men would make as good judges as could possibly be got for the District Courts, but in order to get them they must be offered an adequate salary. But any plan which threatens the public purse will be certain to be negatived. It is as well, however, to point out that in this case the object can be attained, not only without taking any of the public money, but actually leaving to the Treasury the profit which it is at present short-sighted enough to make out of the courts of justice. What we would recommend is, to give to the District Courts their proper work, namely, that of the Superior Courts of Law in England, of the Session Court in Scotland, of the High Courts in presidency towns, and of the Courts of First Instance all over the continent, and in the foreign possessions of continental powers. What is wanted is, in short, to give India a system of courts having some resemblance to that of every other country in the world which is blessed with a civilised government.

A court composed of covenanted civilians, natives of India, and English barristers, would be in our opinion the most suitable of all. The want of energy and system which is the main weakness of a Native Judge would be amply made up for by his brother judges, while the mutual influence of the barrister and the civilian on each other would not be without its advantages. The constitution of a District Court would thus be the same as the constitution of the High Courts. Instead, however, of having at least one-third barristers and one-third civilians, the proviso should be that there should be at least one-third natives and one-third civilians. The necessity for a knowledge of the language and the present constitution of the District Courts, renders some such distinction necessary. It would be impossible to substitute an entirely new body of judges for the judges already appointed, and even if it were possible, the expense

would be so great, that no government could attempt it. The only plan is to distribute the work in a rational manner among the present courts, and gradually, as vacancies occurred, to introduce barristers and High Court vakeels, until the court contained as many of each as might be thought advisable. No immediate improvement would take place in the judges beyond this, that the best of the present Native and European Judges would try the heavy causes instead of the worst. But although no great change in the judges would take place, there would be an immediate improvement in the Bar, which would have a much greater effect than any improvement of the Bench. The concentration of heavy and important cases into one court in each district would at once bring members of the over-stocked Bars of the presidency towns, and even of the English Bar, to practice permanently in the Mofussil.

The present European District Judges of the Appellate Courts with the best of the Native Judges might be made the first judges of the new High Court of Justice, leaving the less capable judges of the Subordinate Courts to their proper functions of trying Small Cause Court cases. Mr. Maine, who has done more for India than, perhaps, any other man in the way of scientific legislation, carried through the Legislative Council, in 1865, an Act for the establishment of Small Cause Courts, and wherever they have been erected they have been received by all classes of the community as the greatest boon that could be conferred upon them. All that is wanted is to extend this Act over all India, as the County Courts are spread all over England. It might be dangerous at first to allow all of the Native Judges to hear Small Cause cases without appeal, although to do so would be a much less evil than to allow them their present jurisdiction, even with as many appeals as can possibly be given. It is not, however, a necessary part of the Small Cause system that there should be no appeal. A Small Cause Court Judge could try just as many cases, or with only a very

slight diminution, with an appeal as he could without one. The procedure is the same in both cases, being that laid down by the Civil Procedure Code for all courts in India. The reason which the County Court Judges in England give for the small number of appeals is the desire of the suitors who usually come before their Courts to settle their affairs out of hand. It was probably intended by Mr. Maine, when he framed the Act, that these Courts, like the County Courts in England, should be universal all over India. As yet, however, they have only been partially introduced, and the result is very curious. A suitor who has a claim for say 5s. as the price of some petty article sold, goes before a Small Cause Court Judge on a salary of 1000 to 1500 Rs. a month, while if he has a claim for land worth a million of money he must go before a judge on 500 Rs. The Superior Court suits go to the ill-paid judge and the petty debt cases to the Superior Judge.

This has arisen to a certain extent from a belief that it is only in large cities and populous places where a sufficient amount of work can be obtained for a Small Cause Court. These Courts have been as yet created in such places only. The principle followed in England has not yet been carried out in India, of giving one judge to a large number of courts in poor and sparsely-populated districts. By giving a Small Cause Court Judge jurisdiction in three or four of the present Subordinate Courts, sufficient work could always be found for him in any district. In England a County Court Judge presides over as many as twelve courts, whereas in India he seldom presides over more than one. In Bengal, for instance, there are twenty-six judges to thirty-six courts, and in Bombay there are four judges to five courts.

Another reason for granting to such inferior courts as we have described the enormous jurisdiction which they possess, seems to be a belief that however erroneous might be the conclusions to which these courts might come, a certain remedy was provided by allowing a sufficient number of appeals.

However bad the court, however ridiculously underpaid, and ludicrously incompetent the judge, only let there be three or four appeals and all will be well. A theory more unfounded or more mischievous than this it is impossible to conceive.

The number of appeals in India is enormous, and the number of decisions reversed is truly appalling. Out of 703,000* *plaints* filed in the year throughout the whole of India, the great majority of which (more than 80 per cent.) are Small Cause Court cases, and of which a vast number (more than half) are never contested at all, there are no less than 68,607† *appeals*, and about 100 appellate tribunals constantly sitting, and several hundred tribunals partly employed in hearing those appeals.

In fact it may be said that in India every contested case of any consequence is appealed, and the only result of making the existing Appellate Courts High Courts of Original Jurisdiction would be that the cases they now hear in appeal would be heard as original suits. The greatest condemnation of the system is that it is altogether an innovation in the native judicial procedure. So new is the idea of an appeal to the native mind, that they have had to borrow the word "appeal" from us to express it. There is, we believe, no word for appeal in any single language in India. An appeal from a corrupt or utterly incompetent court seems to us about as absolutely useless a proceeding as can well be imagined. The opinion of Mr. Best on the value of an appeal is worth quoting:—

"An appeal," he says, "to a superior tribunal on mere facts or combinations of law and fact is, when considered in se, of all checks the most illusory, and of all encouragements to vexatious litigation

* This is the estimate given in the debate in the Court Fees Bill, but there seems to be some cases left out of the calculation.

† The numbers are:—in Bengal, 24,278; Punjab, 14,938; Madras, 9047; North West Provinces, 9042; Bombay, 4389; Burmah, 1647; Central Provinces, 1619; Oude, 1484; Mysore, 1059; Berar, 861.

the greatest. Through the mass of allegation, argument, and evidence it is sometimes almost impossible to ascertain on what ground the decision of the court below proceeded: a disbelief of the witnesses, a misunderstanding of their testimony, or an erroneous view of the law, and the judge whose decision is appealed from may fairly ask that the superior tribunal shall have before it all the materials on which his decision was founded. But this is from the nature of things impossible; who is to report the *demeanour* of the witnesses when giving their testimony, and the evidence itself may be so voluminous as, in the case of a poor litigant, to amount to a prohibition of appeal. Moreover, when the decision of the superior tribunal is obtained, it carries little or no moral weight with it, for it is only the opinion of Judge A against that of Judge B on the credit due to witnesses, or the inference to be drawn from certain facts, in which after all Judge B, whose decision is reversed, may be right."

As to the Courts of Second Appeal. This work is done in Bengal, Madras, Bombay, and the North West Provinces by the High Courts there established, and against these there is not one word to be said, except perhaps that the civilian judges would probably be better lawyers if they had not devoted a large portion of the early years of their service to purely administrative work. Even as they are, however, the public have entire confidence in these Courts, and their decrees are always looked upon with respect, and deservedly so. The state of affairs, however, in other parts of India is different. In the Punjab, the chief court is constituted on the same principle as the High Courts, and gives, we believe, equal satisfaction; but in Oude, in the Central Provinces, in Scinde, in Burmah, in Berar, in Coorg, and in Mysore, the Court of Ultimate Appeal in India is composed of one single judge, and that judge is, in some cases, a military officer, who may never have opened a law book in his life. In Burmah the state of affairs seems to be about as bad as it is possible for them to be. The Ultimate Court of Appeal there is presided over by Colonel Fychte, who, we trust will forgive us for saying, does not appear to be much of a

lawyer.* It is unreasonable, indeed, to expect that he should distinguish himself in that capacity; as unreasonable as it would be to expect a lawyer, who had never been in uniform, to command a regiment with success. He has himself protested against the anomaly, and it is, therefore, upon the Government of India that the whole responsibility of the system must rest.

"It cannot be doubted," he says in his last Report, "that one of the great wants of British Burmah is a judicial commissioner; the duties performed by this officer in the two other administrations in Oudh and the Central Provinces, are here performed by the Chief Commissioner, who, in his executive capacity, has as much to supervise, and as many responsibilities, as would suffice for one individual; in addition to which, he cannot but think that to erect the chief executive officer in a province into Chief Judge is making him, in many cases, judge in his own cause, having to determine many points which intimately affect the revenue, and the well-being of the Government for which he is responsible. The double duty, in most countries considered incompatible, of having to administer a country,† and of being the sole presiding judge in the Ultimate Court of Appeal, is one which entails so much responsibility, so much anxiety, and such an extreme amount of labour, that nowhere, except in British Burmah, is it imposed upon any officer."

It seems to us scarcely credible that a government of English gentlemen should so completely neglect their duty as to set up a sham, such as this, for the Supreme Court of Ultimate Appeal in a country as extensive as their own native land. This system is what is called the non-regulation system, not that there are no laws in force in the territory to which the term applies, for there are more regulations in the non-

* There are no reports given of the cases decided in his Court; we speak from certain legal opinions expressed by him in his Annual Report, in regard to the law in force in British Burmah and other matters.

† British Burmah is larger than all England, Scotland, and Wales together.

regulation provinces than in any of the other parts of India. The system is said to be necessary to accustom the people to our institutions in countries recently annexed. In other words, to teach to the people of a newly-acquired State the systems we have established for the attainment of fair dealing and justice, it is considered best to send to them one who knows nothing about these systems whatever, and in case that even he should give the natives too large a dose of justice, to take care that he shall only have occasional spare half hours to devote to the work.

There is no means of knowing how disputes are settled in these non-regulation provinces as there are no reports, but the author of "Rural Bengal" has given us a picture of one of them, which it is difficult to read without one's blood boiling with indignation. A brave, truthful, simple, and primitive people were driven into rebellion from sheer misunderstanding, neglect, and misgovernment, or rather want of government.

"Year after year the Santal sweated for his oppressor. If the victim threatened to run off into the jungle the usurer instituted a suit in the courts, *taking care that the Santal should know nothing about it till the decree had been obtained, and execution taken out.* Without the slightest warning the poor husbandman's buffaloes, cows, and little homestead were sold, not omitting the brazen household vessels which formed the sole heir-looms of the family. Even the cheap iron ornaments, the out-door tokens of female respectability among the Santals, were torn from the wife's wrists. *Redress was out of the question.* The court sat in the civil station perhaps a hundred miles off. *The English judge, engrossed with the collection of the revenue, had no time for the petty grievances of his people.* The native underlings, one and all, had taken the pay of the oppressor. The police shared in the spoil. 'God is great; but He is too far off,' said the Santal, and the poor cried, and there was none to help them."

We have now gone over the principal classes of courts

in India, and we have endeavoured to bring home to our readers the true character of our so-called administration of justice in India. There are many points which we have not gone into. The immense cost of justice in India, and the long and wearisome delay, the hope deferred that maketh the heart sick. Cases which have been before the courts, not two, or three, or four, or five years, but twenty, and thirty, and forty years, and even fifty years.* The delay in the courts of India is, and has always been, worse than that of the Court of Chancery in its worst days. In Chancery a decision was worth something when it was obtained, but in India after half a century it may be spent in litigation, and a decision having been finally arrived at, the suitor's troubles only just begin. The following recent case† which we cannot resist quoting, will beat *Jarndyce v. Jarndyce* hollow, and no Chancery suit that was ever filed will compare with it. The following is an extract from the judgment of the Privy Council in the case:—

“Their Lordships, in a judgment necessarily so long, have thought it right to take no notice of several matters, important in themselves, but not affecting their decision; they have now disposed of the various points relevant to that decision, and which were urged by the learned counsel for the appellant with their usual zeal and ability; but they cannot pass from this case without the expression of their surprise, and deep regret, that such a case should have been possible under the system of jurisprudence prevailing in any country under the British dominion.

“— pudet hæc opprobria nobis,
Et dici potuisse et non potuisse refelli.”

“The subject-matter of the original suit, a debt, it should seem undisputed, or at least as to which, in substance, no serious dispute was possible, where the plaintiff's difficulty had not been to establish his right to the judgment of the Court in which he sued, but to

* See Privy Council Reports, Indian Appeals.

† *Rajah Mohes Narain Sing v. Kishramund, Miner, and Another.*

make that judgment available when obtained, though the funds were ample for the purpose. By fraud and chicanery, by every possible abuse of the forms and procedure of law, by force and violence, even, it is to be greatly feared, to the shedding of blood, justice was evaded and defied for fifteen years, from 1830, when the decree was pronounced, to 1845, when the final sale took place. The original plaintiff, wearied out with the long delay and expense, fain to sell the benefit of his decrees, the unhappy man who had been substituted for him losing his life, while vainly striving to realise its fruits. And now, in 1862, their Lordships have been called on to dispose of a suit, in which it is sought to invalidate that whole proceeding as against a purchaser for value, the second in succession from the execution creditor, against whom, or the party from whom he immediately purchased, no fraud, no collusion, no knowledge of the supposed defects in the title is alleged. They have had to deal with a record of nearly three hundred pages in folio, setting out more than three hundred documents and depositions. Their Lordships do not intend hastily to cast censure on any individual; the materials are not before them for that purpose, nor is it within their province to do so; but it is useful to point out that a system under which all this is possible loudly called for amendment, and, administered as it here has been, defeated the very object for which it was instituted."

We fervently hope that the evidence we have collected in these articles will attract more attention to the reform of the judicial system of India. It will be a great and a glorious day for India when its rulers shall give it a High Court of Justice, presided over by judges of ability, learning, and unquestionable integrity, with an honourable and independent Bar, and officers of tried probity and capacity.

The supersession of the present pests and plague spots on the face of the land by Courts of Justice such as these—by Courts of Justice in the true sense of the words—is one of the first duties of England to her dependent eastern subjects, and the longer that this is delayed, the heavier will be the reckoning which must be made with the millions committed to our care.

We cannot do better than conclude with the almost prophetic words of the great pioneer of law reform in England, when addressing the House of Commons on the subject of the reform of the courts of law. In that speech, thirty years before the outbreak of the Indian Mutiny, and speaking of the very subject about which these articles have been written, the subject of the administration of justice in India, Lord Brougham said:—

“Should the day ever come when disaffection may appeal to seventy millions against a few thousand strangers who have planted themselves upon the ruins of their ancient dynasties, you will find how much safer it is to have won their hearts, and universally cemented their attachment by a common interest in your system, than to rely upon a hundred thousand Sepoys’ swords of excellent temper, but in doubtful hands.”

ART. IV.—THE BIBLE AND THE PUBLIC SCHOOLS.

Case of the Cincinnati Board of Education. London: Cazenove, Old Bailey. 1870.

ENGLAND and America have alike had their “religious difficulty.” In England the question requiring solution has given rise to abundance of discussion, and to not a little ill-feeling. It has threatened to break up the Liberal party. It has drawn from some of the leading dissenting members of Parliament an expression of opinion that they have not been fairly treated. Mr. Miall spoke of being “once bit, twice shy.” Others used equally strong language. The Government has been accused of carrying a measure, by the help of its opponents, against its supporters. In the

third reading in the Commons, Mr. Gladstone had to defend himself, not against those members who sit on the left of the Speaker, but against his own strongest supporters, and yet the whole *fons et origo mali* is that religious difficulty which some of the ablest teachers and school inspectors in England, with men like Dr. Temple and Canon Norris at their head, have declared not to exist. Various solutions have been offered to Parliament. One party proposed a purely denominational system. Another advocated secular schools, while the forms of compromise between these extremes were legion. The system finally adopted is one, as our readers know, which in the newly established schools prohibits all sectarian teaching whatever. No catechism, creed or formula is to be used. *Punch* gave a tolerably fair description of it when he described the contending fractions as having been reduced to the lowest common denomination. It is not a little singular that the State school thus established will correspond very closely to the common school of the United States. There, too, the people were as determined as here to have religious teaching. Secular schools were denounced as godless schools, and no State has yet gone to the length of establishing them. There, too, a lowest common denomination had to be found. It was found very much as the English was. The Bible was read daily, but without note or comment, and there also no catechism, creed or formula was to be used.

But while we in England have just arrived at the solution which America adopted more than half a century ago, a great movement has sprung up across the Atlantic, with the object either of establishing a denominational system of education, or of having one which should be altogether secular. New Englanders, like the Rev. Ward Beecher, are advocating a purely secular system rather than one which shall be denominational; while the Roman Catholics, there as here, are doing their utmost to get the education

of the children of their own communion entirely in their own hands. Openly and avowedly they refuse to sanction the American school system. They say in America what Cardinal Cullen says in Ireland, that Catholic children shall not be educated with Protestant children ; that the schools of the country ought to be divided into two great classes, Protestant and Catholic ; and that the children in each should be under the supervision and control of its respective religious authority.

The question, therefore, among Americans is, how are these objectors to be met? Two proposals for this purpose have been made. One is, that the schools should be made altogether secular. Exclude the reading of the Bible and religious instruction altogether, and forbid the beginning of the day's work with the singing of a hymn. This is the solution which the School Board of Cincinnati tried. On November 15th last year, a majority of the members passed two resolutions ; that religious instruction and the reading of religious books, including the Holy Bible, should be prohibited in the common schools ; and that the opening exercises should no longer commence with the reading a portion of the Bible and appropriate singing by the pupils. These resolutions were equally unsatisfactory to the supporters of the present system and to the Roman Catholics. If, says the *American Tablet*, these changes have been brought about with the view of reconciling Catholics to the common school system, their purpose will not be realised. Godless schools are more objectionable to them than sectarian schools. The reading of King James's Bible, much as they objected to it, was yet better than the exclusion of all religious teaching. American Protestantism of the orthodox stamp, says the writer, is less objectionable than German infidelity. Nothing can reconcile them to the common schools in any shape. They are now sectarian. If altered as proposed, they will be godless. They were founded in the main, in imitation "of the system decreed by the convention, that there was no God ; which

sentenced Louis XVI. to the guillotine, abolished Christianity and declared death an eternal sleep."

The other proposal and the one which, for the present, meets with most favour, is *stare super antiquas vias*. This common school system has made New England the best educated country in the world—has been copied in many States with great success—has been the admiration of every foreigner—has taken the English, Irish, Scotch, German, and other children whom the tide of emigration has drifted to Western shores, and has converted them into mostly honest, God-fearing American citizens—and, lastly, has worked well wherever there has been a disposition to allow it to work. As the counsel for the plaintiffs in this action says, *nolumus mutare leges nostras*.

Immediately after the resolutions given above had been carried, a petition was filed against the Board of Education of Cincinnati in the Superior Court of that city. The petitioners set forth that the reading of the Bible has been the daily practice since 1829, that religious instruction in elemental truths has been given since the same date, but that no sectarian teaching, nor any interference with the rights of conscience, has at any time been permitted; that no pupil had ever been required to read the Testament or Bible if his parent had desired such pupil to be excused. They maintain that it is impossible altogether to exclude religious teaching, that there are no text-books in existence which do this, and that large numbers of children in the city obtain no religious instruction except such as is gained in the common schools, and they pray that the Board of Education may be compelled to rescind their resolutions.

In answer to this petition a temporary "restraining order" was granted, ordering that the resolutions should not be acted on until the hearing of the petition.

The Board of Education in reply admitted the facts. Their arguments are undoubtedly very forcible. People in Cincinnati are very much divided in opinion on the subject of

religion. The Israelites reject the Christian religion altogether, and admit only the Old Testament to be inspired. Many of the citizens reject the Bible as an inspired book. The Roman Catholic citizens believe that the version of the Bible which is read is incorrect as a translation, and incomplete, inasmuch as it omits books which their Church believes to be an integral portion of the inspired canon. It holds that the Scriptures ought not to be read indiscriminately, since the Church has divine authority as the only infallible teacher and interpreter of them. It maintains that the reading of the Scriptures, without note or comment, and without being properly expounded by the only authorised teachers, is not only not beneficial to the children, but is likely to lead to the adoption of dangerous errors. The practice of reading King James's Bible, say the Board, has had the effect, therefore, of keeping Roman Catholic children out of the common schools. And yet Israelites, unbelievers, and Roman Catholics have all to pay taxes for the support of these common schools. In other words the common school system has found the lowest common denomination by throwing these fractions of the community out of the calculation.

On November 30th last the case came on for argument before the Court. In the volume, whose name precedes this notice, the arguments of counsel are set forth at full. They occupy upwards of 400 pages, and to those who take an interest in this subject they will be pleasant reading. To the present writer they are peculiarly suggestive as indicating a phase in a struggle which is beginning in America, and which, he believes, we shall have to pass through here. The difficulty which met the Cincinnati Board is exactly that which will meet Parliament when it takes into hand the question of Irish education. In England the Catholics are so few that we may find a common denomination without regarding them. But it is otherwise in Ireland. There, the system just established for our English school boards, of a religious teaching, without creed or formula, will be utterly repudiated. An American

system of Bible reading, without note or comment, might indeed be tolerated under necessity, but the teaching of religious truth by a Protestant layman is intolerable. Under the system established in Ireland, by the labours of Archbishops Whateley and Murray, a solution was found which it might have been thought would have satisfied the Catholics. If the majority in the school was Roman Catholic the teacher was chosen from that communion. In any case he only gave religious instruction to the children of his own communion. At the same time the school was open at stated hours to any priest or minister of religion to give instruction to the children of his own sect. If ever a system promised to give satisfaction, surely it was this. Its lines were traced by a joint committee of Catholics and Protestants. The archbishops who presided over the two Churches did their utmost to support it. For twenty years it worked well. It turned out better scholars at the age of fourteen than the English schools. It has never had a charge of proselytism brought home to it. It was managed by a board on which all religious denominations were represented. It was an economical system. It allowed the fullest liberty to the religious zeal of priest and parson. And, lastly, it has formed the model on which several of our colonies have framed systems, which are doing their work admirably.

Yet this system, catholic in the best sense, statesmanlike in its every line, has, since the death of Archbishop Murray, and the accession of Cardinal Cullen, been unsparingly attacked. The Irish priests, with their archbishop at their head, give few reasons for their opposition, but take their stand upon their assertion that it is necessary in the interests of the children that they should be educated in denominational schools. In Ireland as in America they say, make what concessions you like in your common schools, and our children shall not attend. Denominational schools we want and will have. No other schools can give us what we require. We will combine in this matter with no other religious body

whatever. We care nothing for education unless it is given under the clergy. It seems to us important to recognise that this is what the Roman Catholics are claiming both here and in America. The fact ought fairly to be looked in the face. While we are disputing here what we shall do for their relief, while in America the boards are passing resolutions like the one under consideration, the believers in an infallible head of their Church are telling us plainly that no concession will be of avail; that they will not fall into any national system of education, whether it concerns the primary schools or the universities.

Of course we shall shortly have to meet the question, and to decide whether we will allow a multiplication of denominational schools, and, as it appears to us, place in the hands of the priests greater power than they have ever yet possessed over the education of the young; or whether we shall determine to maintain the present Irish system, or establish one which shall be altogether secular. The question, so far as Ireland is concerned, will be upon us before the Americans have to decide it; though it may well be that a longer time may elapse before we have to face it as an English question. We shall then have the experiences of Ireland and of the United States to guide us. We shall find that practically there are only two courses open to us; that the recent solution of the religious difficulty, however satisfactory it may be for a time, is not final; and that the lowest denomination is not common.

The volume before us contains the arguments in full of the Cincinnati case. The plaintiffs endeavour to show, and as the Court decided, successfully, that religious instruction is in contemplation of law an essential element in the common school system of education; that the Board had not power to prohibit such religious instruction. It was clearly shown that the State contemplated religious teaching, but took precautions only that such teaching should not be sectarian; that, in the opinion of men like Judge Story, the constitution

contemplated the protection of religious opinions and worship, prohibiting only an establishment of religion. The plaintiffs proved, too, from the statements of American Catholics, that the latter did not wish to exclude religious teaching, but wished to have such teaching in their own hands. As for the infidel, he could withdraw his child from religious teaching, but he had no right to forbid the State to teach religion. The argument founded on differences of belief fell to the ground. It had been insisted that the elementary truths of religion could not be taught without running into sectarianism, but these truths were common to all sects professing Christianity, and Christianity was recognised by the American constitution.

The arguments for the Board of Education are equally obvious. The strongest, perhaps, is that which has regard to the teachers. These men and women, by whom, or under whose direction, the Bible is to be read, are not abstract, undenominational Christians. They may be Lutherans, Presbyterians, Anglicans, Methodists, Calvinists, Unitarians, &c. Each one has his religious bias; each one will find it difficult to divest himself of this bias when he comes to read the Bible. The reading of the Bible, even if it is to be without note or comment, is really only a sectarian exercise. It cannot be regarded as promoting religious culture. The child either gets some religious notions from it or it does not. If it does, then religious teaching is given conformably to the views of the reader. If it does not, then its only office is to serve as a badge of a particular faith—as the symbol of Protestantism, or as a Protestant minister referred to by the counsel had expressed it, “as the flag of Protestantism on our schoolhouses.” It was easy to say that the Bible ought not to be offensive to Roman Catholics. But reverse the case; suppose the Protestants in a minority. Among the Catholics, as among all Christians to the time of the Reformation, the practice of making the sign of the cross before every secular act of life is enjoined as of universal application.

"Fac hoc signum," said Cyril, *"sive edas, sive bibas, sive sedeas, sive stes, sive loquaris, sive ambules, sive in omni negotio,"* &c., &c. The cross is the sacred symbol of Christianity, and the making the sign a very old and inveterate practice. What would Protestants say if a Catholic majority in the School Board should enjoin this practice upon the teachers and children in the public schools? Would they listen to the plea that no believer in the death of the Redeemer on the cross could reasonably object to the emblem of salvation? Would not their answer be—The sign of the cross, whatever it may have once been, is now the peculiar symbol of Roman Catholicism; as such, it cannot be tolerated in schools paid for and to be used by Catholics and Protestants alike. Surely, then, the Catholic had a right to object to this "flag of Protestantism on our school-houses;" to say, reading the Bible without note or comment, is the peculiar symbol of Protestantism, and is not to be tolerated in schools established by Catholics and Protestants alike?

The question was one of conscience. The resolutions had been passed with an honest desire to bring the fifteen thousand Catholic children of the district into the common schools. The Catholic body were one-third of the entire population. They protested against the imposition of taxes to pay for the reading of the Protestant Bible. They were supported by three Jewish Rabbis, who had preached in support of the School Board, and had protested that they ought not to be taxed to pay for the reading of the New Testament. The Hicksite Quaker declared his conscience offended. Other Churches without creeds, but not without purpose to serve the truth and live many lives, were taxed to support a view of the Bible which they did not entertain: for to them the Bible was not a sacred book distinct from other sacred books. Other unbelievers came, to whom the counsel for the plaintiffs denied all rights, and they too claimed liberty of conscience. On what ground could they be

denied, unless the State was prepared to proclaim an established religion?

The counsel for the Board denied that Christianity was part of the Common Law of America. It had been part of the law of the land, when Williams had been sent into the backwoods in the depth of winter because he had preached liberty of conscience; when Quakers were banished and Quakeresses hanged; when the penalty of death had been imposed on Catholic priests for taking the sacrament to the dying faithful. It was part of the Common Law of Virginia when dissenters were required to build the churches of the Anglican cavaliers; but in consequence of the labours of the Protestant Roger Williams, and the Catholic Garrard, and the infidel Jefferson, Christianity was not now a part of the Common Law of Ohio, or of any State in the Union.

While the other side had maintained that Christianity had furnished republicanism with its model, had produced the best patriots, men like Hampden and Cromwell, and had on that account been incorporated into the Common Law of America, the counsel for the defendants maintained that republicanism was not due to the Christian elements in the culture of the people. Christianity had nothing to do with politics. Its fundamental theory was a denial of the value of the things of this life as compared with the inestimable possession of the things of another. The equality on which Christianity insists is a spiritual, not a temporal equality. It is equality before God, not before the law. Whenever its teachers have spoken of equality they have pointed to the world beyond. Hence the virtues which Christianity enjoins are those of meekness, resignation, obedience, self-denial, &c., noble virtues, but not such as lead to the establishment or maintenance of a democracy or a republic. Neither Hampden nor the men who fought at Lexington were men who tendered their right cheek after they had been smitten on the left. The truth is, that political freedom is born of the spirit of stalwart self-assertion; of the readiness to do battle for personal right; of

the disposition to quarrel about a penny or a pound which as ship-money or in any other way is wrongfully exacted; and to resent every injury to the person. Owing to the fact not having been recognised that Christianity only had to do with another life, Christianity had been for twelve hundred years the faithful handmaid of despotism.

For these reasons they maintained that Christianity was not and could not be the foundation of American republican institutions. Such being the case, the State could not teach religious truth according to the belief not even of the whole of Christians, but of only a part of those professing Christianity. The State and religion were independent of each other. It might be true, nay, they knew it was true, that there was a section of the population which wished to get rid of the public schools altogether. Such persons had a sinister, ulterior purpose. The real object of their agitation was to distribute the school fund among the religious sects and denominations. But the School Board had no such object. They wished rather to defeat these persons by removing the only fulcrum on which the lever, to be used in dismantling the edifice of public education, could rest. They wanted to say to honest Roman Catholics—your complaints are groundless. The schools are open to all. There is nothing done or taught in them to which the most conscientious among you can take offence. No sectarian flag flaunted by bigots floats over the schoolhouse. No spirit enters there but that of peace and good-will towards all men and creeds.

For the arguments in full we must refer our readers to the volume itself. It is sufficient to report that the resolutions were declared by a majority of the Court to be illegal, and the *injunction was made perpetual*.

We have gone into the arguments at some length, because, as we have said, the questions raised are such as we shall have to face in this country before many months have passed. The arguments used by the counsel on both sides can hardly be called legal; they may be called constitutional without

much violence. But, as was perhaps necessary in the case of speeches which were intended for the outside public quite as much as for the Court, they are full of what can hardly be called either legal or constitutional argument. This, while it renders the volume a somewhat curious specimen of a legal book, adds much to its interest. Arguments founded on Milton and Shakespeare, Homer and Virgil, with a glance at Confucius and the opinions of the founders of the American Republic, are not what one expects to find in a legal discussion. The volume, however, gives a favourable specimen of American oratory, and on this account, as well as for the reasons we have already given, we have great pleasure in commending it to our readers.

ART. V.—DEFECTIVE STATE OF INTERNATIONAL LAW.* By PROFESSOR LEONE LEVI, of Lincoln's Inn, Barrister-at-Law.

IT is much to be regretted that whilst proper remedies are available of a preventive, suppressive, and penal character, against crime, the ordinary disease of the body politic, there are no remedies either of a preventive, suppressive, or penal character against war, the highest and most pernicious crime in the commonwealth of nations, unless it be, indeed, its own condign retribution. It is supposed that International Law is able to subordinate the relations of States to the dictates of natural law, and that though nations acknowledge no superiors, they are yet under the same obligation mutually to practice honesty and humanity. But, alas, experience shows that International Law is not able to effect

* This article contains the substance of a paper recently read at the Social Science Congress, Newcastle-upon-Tyne.

its own noble mission. That law does indeed afford a standard of high maxims of right and justice, by which the acts of States may be judged, but fails altogether in the means of securing adherence thereto, and many are the acts which that law reprobates, that continue to be committed with the utmost impunity. Can nothing be done to place the public law of the civilised world on a firmer footing than it stands at present? Is there no mode for supplying the serious shortcomings of International Law?

The root of weakness in International Law is, that it is not a law. A law, in its special restricted sense, is a command or precept, emanating from some superior authority, and constituting a rule of action which an inferior is obliged to obey. Not so with International Law. That is only a body of principles or opinions enforced, not by physical but by moral sanctions. Nor is there much certainty or authority in the sources of such principles. Natural law, divine law, the reason of the thing, the customs of nations, the express agreements of States, the judgments of Prize Courts, the dicta of learned writers have each and all elements of weakness in them. Natural law is a sentiment rather than a principle. Divine law is unheeded by some, denied by others. The reason of the thing is often not very transparent in particular cases. The judgments of Prize Courts frequently reflect the opinions of the State under whom they are instituted. Treaties are easily disregarded or broken, and the statements of writers of the law of nations are often uncertain and conflicting.

Setting aside, however, these inherent defects, generally, we may say, International Law is composed of two elements, the natural and the conventional. The natural element is common to all nations. Like the *jus gentium* of the Romans, it embraces all those principles of morals which are implanted by the Author of Nature in the heart and mind of every one, of whatever clime or race, and which ought to regulate the acts of every individual of every State in their mutual

relations. The duty of being faithful to one's engagements, or of acting in good faith, or of respecting the rights and property of others, are necessarily alike in every country, and are as binding on the State in its collective capacity as a moral person as on an individual. The conventional element of International Law is that which results from the practice of nations, from the judgments of their Prize Courts, and from express agreements or treaties. There are leading cases in the law of nations as in municipal law. The declarations made by ministers or ambassadors, the diplomatic correspondence, the conduct of States, constitute so many evidences of the positive obligations of States. But those two elements, the natural and the conventional, are often intermixed and often separate. There may indeed be a natural obligation where there is not a conventional, but there is scarcely a conventional without the natural element bound up with it. Unfortunately, however, of the two elements the natural, that which is the most unchangeable and universal, is also the less certain in its operations and authority. Could we give to the universal principles of natural law the same certainty as is possessed by the conventional, we should not have to lament the weakness and uncertainty which characterise by far the greater part of the law of nations. As it is, the structure of International Law is most defective and unsatisfactory. If, as according to some, the law of nations in reality consists of the practice of nations, for what practice, however unhallowed, can we not find ample precedents? If, as according to others, it consists only of the aspirations of philosophers and moralists, or of the dictates of natural or revealed religion, we have always the ready answer, that its principles, however wise and beneficent in theory, are not suitable in practice.

For many of the evils and difficulties which often disturb the intercourse of nations International Law is certainly not responsible. It is the political system that is at fault. It is from the defective organisation of States that the

greatest troubles arise. International Law takes the States composing the great commonwealth of nations such as they are, but it cannot guarantee their permanent existence. Since the Treaty of Vienna, which was supposed to have settled the public law of Europe, and established a balance of power among its different States, Italy has become a kingdom, the German Confederation has been destroyed, the Republics of Frankfort and Cracow are extinct, Belgium is parted from Holland, and another Napoleon has reigned in France. Matters connected with the internal government of a State and matters relating to its external relations appertain to political science, and not to International Law, and in practice there is, alas, too great a difference between politics, which are too often prompted by the lust of power or expediency, and International Law, which proposes to set forth the dictates of eternal justice. In the relations of States in time of peace International Law enjoins the observance of all those duties which the safety of the general society requires, and commends the performance of those offices of humanity which may tend to the preservation and happiness of other States, and to promote their intelligence, power, and freedom; but how often the political system of States has been based on selfishness and exclusiveness. Nor would it be right to attempt to enforce what are simply moral duties, whether in international or social relations, for they are duties which do not produce corresponding rights, or rights which do not produce corresponding duties. It might be an act of enmity on the part of a State to refuse to trade with another, but no one could compel it to do so without violating its own right of freedom. We had no more right to compel China to take our opium than China would have to compel us to receive her tea duty free.

It is, however, when we come to a state of war that the defective character of International Law becomes most apparent. Amongst the many works on the subject, Grotius's "*De Jure Belli ac Pacis*" holds certainly the first and highest

rank, and this work was suggested, as he said, by the natural horror with which he beheld the frequency and atrocity of the wars in which every State was engaged on the most trifling pretext. "I have been for a long time convinced," he said, "that there is a God common to all nations, who watches both the preparation and the course of war. I have remarked, on all sides in the Christian world, such a wanton license as regards war, that even the most barbarous nations should blush for. People turn to arms without reason, and for the slightest object, and they trample under foot all Divine and human laws as if they were authorised, and were quite resolved to commit all sorts of crime without any check." Grotius wished to put a stop to such barbarism, and he conceived the thought of bringing the precepts of Scripture, as well as the dicta and sayings of philosophers and moralists, having a direct bearing on matters relating to peace and war, clearly before the civilised States of the world, in the hope that these might, by their own moral force, succeed in establishing a law which no civilised State might feel itself at liberty to disregard. That great influence was exercised by that and subsequent works on International Law is incontestible.

What we lament is that whilst, on what may be considered insufficient and unsatisfactory ground, at least in that religious aspect in which Grotius first discussed the question, both he and the other principal writers of the law of nations declared that, under certain circumstances, war is lawful, neither Grotius, nor any other writer, sufficiently defined the precise circumstances under which war may be justifiable. Following the analogy of criminal law, Lord Bacon said:—"As the cause of a war ought to be just, so the justice of that cause ought to be evident, not obscure, not scrupulous; for, by the consent of all laws in capital cases, the evidence must be full and clear, and if so where one man's life is in question, what say we to a war which is even the sentence of death upon many?" It is, I conceive, too loose a statement to say that war is lawful

to prevent or redress a wrong, to obtain a reparation against an injury committed or threatened, or for any act committed or expected to be committed affecting the independence of a State, or the free enjoyment of its rights. What, if the wrong be of a most trivial character? What, if the threat be imaginary and not real? Looking back to the ordinary cases of war, how few of them can be resolved into wars simply of self-defence! There have been wars of pillage, conquest, and domination, where the Cæsars, the Alexanders, and the Napoleon Bonapartes claimed an universal empire. There have been religious wars, as where the Greeks fought for their Temple in Delphis, where the Huguenots fought for their existence in France, and where Protestantism asserted its rights, arms in hand, in Germany. And there have been wars for the maintenance of a principle, as those of the French Revolution and the wars of Austria in Italy.

But the most prolific causes of war in modern times have been the balance of power and intervention, both of which infringe a cardinal principle of International Law, the principle of the sovereignty of States. What is the balance of power it is not easy to determine, but its object would seem to be so to distribute the forces of the different States, that none shall have the power to impose its will on, or oppress the independence of, any other State. Let any State extend its forces or multiply its resources beyond a certain limit, and according to that principle a cause is at once given to every other State to unite in checking this unwonted aggrandisement. Nor is this principle a simple theory, since the treaties of Westphalia, Utrecht, and Vienna, have, in effect, reduced it into positive law. But has not every State an absolute right to increase in power, forces, and wealth? Can we prevent the substantial sources of aggrandisement which lie in the superiority of race, in greater capacity for labour, and in the strength of higher morals? The power of a State does not consist merely in the extent of its territory, or in the number of its population, but in the wisdom of its administration, in the activity of its inhabitants, in the full development of its

resources. Against this development no balance of power can be of any avail. Most mischievous was, moreover, the principle of combining all the States of Europe on every isolated emergency; thus uselessly extending the ravages of war, and bringing nations into the fray which had no interest to defend or any wrong to avenge.

But we have not done with this principle. The present war between France and Prussia had its origin in the jealousy of France for Prussian aggrandisement in Europe. It is another war caused for or by the balance of power. Can it be considered a just cause of war? The authority of Grotius upon this point is of the greatest value. "We cannot admit," he said, "the validity of what some authors have taught that, according to the law of nations, it is lawful for us to take arms in order to enfeeble a State whose power is increasing, lest, if allowed to increase too much, it should be in a position, when occasion arises, to do us injury. We allow, that when deliberating whether we should make war or not, such considerations may have their weight, not as a justification, but as a motive of interest, so that if there be a just reason to take arms, the fact of the aggrandisement of such State may render it prudent, as well as just, to declare war. But that we have any right to attack a State for the simple reason that she is in a condition to injure us, is contrary to all rules of Equity. War is lawful only when necessary, and it cannot be necessary unless we have a moral certainty that the power we fear has not only the means but the intention of attacking us."—Grotius, Book II., ch. i., s. 17, and Book II., ch. xxii., s. 5. It is clear, indeed, on every ground, that the war which now agitates and afflicts Europe is altogether a gratuitous breach of International Law.

But another principle is being evolved at this moment in Germany and Italy. It is the principle of Nationality. It is true that Prussia has stretched the bounds of her territory far and wide in Germany, that she has absorbed Hanover, destroyed the Republics of Frankfort, subjected

the Hanse towns, and rendered Saxony and Baden subservient to her will. But she is only placing herself at the head of a German nationality. Equally true it is that Sardinia made war on the King of Naples, absorbed Tuscany, got hold of Lombardy and Venice, and now appropriates even Rome; but she has acted throughout on the principle, and asserted the right, of an Italian nationality. What constitutes true nationality, and whether it results from identity of language and literature, from unity of race and descent, from the possession of a national history, or from geographical position, it matters not. Suffice to say, that where the sentiment of nationality does exist in any force, there is a *prima facie* case for uniting all the members of the nation under the same government.

But admitting that a nation has the right to constitute itself into a people or separate State, has it a right to claim, even by force of arms, any portion of that people which hitherto may have formed part of another nationality, or have been subject to another State? Take the case of Rome at the present moment. Have the Italians any right to that province or State? The only answer is that the right of nationality must be held superior to any right arising from the present organisation of States. The spirit of nationality is strong and enduring, and it is because it is not sufficiently recognised in the constitution of States that we have to lament the frequent occurrence of revolution and war.

Interventions have also been frequent causes of war. On the principle that, whenever a sudden and great change takes place in the internal structure of a State, dangerous in a high degree to all neighbours, they have a right to attempt by hostile interference the restoration of an order of things safe to themselves, or at least to counterbalance, by active aggression, the new force suddenly acquired, Russia, Prussia, and Austria arrogated to themselves the right of interfering with any changes in the political system of the Italian States. France intervened in Spain to reverse the national party, and to re-establish absolute government; Russia, Prussia,

and Austria tore to shreds, and divided among themselves, poor distracted Poland. In most cases, let it be observed, it was the strong that interfered in the affairs of the weak, and it was rare indeed when such interventions were suggested from any regard to the interest of the weak. But even if it were, that would not justify the intervention. It might appear a chivalrous act on the part of a strong power to offer its aid to a weak State at a moment of danger, but universal experience proves that no State can long maintain its independence if it is to be beholden for it to the support of another power. It should be remembered, moreover, that an armed intervention is war, and that no duty of friendship or generosity can justify the unsheathing of the sword, and the perpetration of so much evil as war brings in its train.

But there is another kind of intervention of an amicable character in which we are at present deeply interested. In its primary sense the word "intervention" means to come in between things or persons, to interfere in the affairs of another. Has a nation any right to exercise such interference? Does the community of interest, which binds us altogether, give us a voice in the acts and conduct of other States? Can we force our offices or interpose our action on an unwilling nation? To do so would be to infringe the sovereign rights of other States—would be to incur the certain danger of war. And it is the same thing whether we interfere *officiously* by verbal notes through our ambassadors, or *officially* by formal notes or letters, or by the proposal of a congress, or in an armed manner preceded by an ultimatum, and accompanied by a military demonstration. In either case the intervention would be the sole act of the intervening party, which might be resented or opposed by the parties affected by it. Mediation, on the other hand, is quite another thing. A State may most appropriately at any time offer its good offices for the amicable settlement of a dispute. It may be asked by the contending parties themselves to make proposals for such settlements without binding themselves to accept such proposals; or may be constituted arbitrator to decide the question. There is

no interference in mediation. It is not a forcing of one's own will or action upon others, but it is only the manifestation of willingness and readiness to perform a friendly act. What should be done in the present difficult position of France and Prussia? Should England intervene? Notes verbal or official would be of little purpose. For a congress they are not ready. An armed intervention would be war to either State or to both. Surely, then, no intervention is possible. But it is otherwise with mediation. This may be offered at any time without any danger of wounding the susceptibilities of either power.

The only justifiable cause of war, if we once admit its lawfulness, is self-defence. England, for instance, has mighty interests to defend at home and abroad. She has an enormous trade; she has unbounded wealth; she has colonies and dependencies widely scattered and isolated; she has an extensive number of subjects planted in every part of the habitable globe. Nothing could be more natural than that she should be jealous of her rights, and that she should be prepared to defend them at all hazards. But a limit must be put even to this right of self-defence. Many of the wars for the balance of power were waged on the plea of self-defence, and the enlargement of a State, though more than thousands of miles distant, has been held sufficiently dangerous to justify a war. But surely nothing short of actual invasion of territory, nothing less than an act of aggression on the sovereign rights of a State, should justify a war of self-defence. International Law has given even to this principle too great a latitude, and the European nations have been too prone to use it as a convenient justification for acts of unhallowed aggression.

When war has once been declared it seems almost puerile to spend much time in settling the exact bounds to which the belligerents may lawfully proceed, for bitter experience proves that when the passions are unfurled, the reign of law is at an end. We may wish, however, that even as respects the conduct of nations in time of war, International Law should be more definite and consistent. It is a sound

principle that, whilst whatever is likely to be conducive to the accomplishment of the enterprise is allowable, whatever has not that object directly in view is not to be held lawful. But the principle is neither properly carried out nor universally applied. It may be right, because necessary, in a belligerent to capture soldiers, military officers, and arms, but no such justification exists for the capture of goods and property of private individuals. Nevertheless, whilst International Law seems to disallow the capture of private property by land, except, indeed, in case of fortified towns, in the form of booty, it permits it by sea. The United States of America proposed in 1856 to accept the regulation relating to the abolition of privateering, on condition that private property on the high sea should be exempted from seizure. But England did not accept the proposal. Now Prussia has taken the initiative in this important reform. Let us hope that at a future congress the principle may be established by the consent of all nations. Upon the principle that war should be waged against the armed forces of the belligerent, and not against inoffensive subjects or places, no private individuals should be captured or shot, and nothing should be destroyed but what may be used as means of offence and defence in actual warfare. Yet we still hear, though International Law does certainly not justify it, of wanton practices against whole populations, of the destruction of ports of trade, and of the bombardment of places not fortified. The right of search also as practised in former wars is vexatious and needless. Since it is the destination that determines whether an article is contraband or not, it should rest with the belligerent cruiser to bar, if he can, the entrance of such into the enemy's country, without disturbing for that purpose the entire trade of the world. The case of the *Trent*, during the American War, showed the necessity of having it declared, that packets engaged in the postal service, and keeping up the regular and periodical communication between the different countries in Europe, America, and other

parts of the world, should be exempt from visit and search. The list of contraband articles would need to be reduced and rendered more certain. The blockade of commercial towns also can scarcely be defended as useful or necessary, since, by the improvement of internal communication, the enemy is, in most cases, able to provide himself with necessities from other means. Many, indeed, are the improvements needed in the principles of International Law relating to the rights and duties of belligerents.

But not less essential it is to define more correctly the rights and duties of neutrals. It is all important to realise the fact that a state of war between any two States is highly detrimental to the interests of every other nation, who suffer from the destruction of their trade and the diminution of their resources. It is not as a concession, but as a right, that neutrals claim to continue their trade and navigation undisturbed; and it was not more than they were entitled to, when they wrested from the belligerents the principle that the neutral flag shall cover enemy's goods, and that neutral goods shall not be liable to capture under the enemy's flag. But the great question of the duties of neutrals respecting the sale and transport of contraband of war remains to be settled.

What is most important of all, however, in International Law, is to put an end to the obscurity and uncertainty which now exists on many subjects; and I conceive that we could not pursue a better course to that end than by following up the useful precedent set by the Conference of Paris of 1856, in reducing as many of the points as are recognised and acted upon by the civilized States, into so many distinct propositions to be recognised and expressly assented to by all civilized States. If we could bring nations to understand that International Law is really binding upon us, and if we could clothe its precepts with the authority of an express agreement, we should do much to secure a fuller compliance with its requirements. A congress is likely to take place at the conclusion of the present war to

restore order in the political system of Europe. Let us hope that an effort may then be made to put the law of nations on a firmer and more satisfactory footing than it has ever yet been placed.

And since, with the multifarious and complicated relations between States, disputes will ever arise, let us provide some means for their peaceful arrangement without resorting to the fearful alternative of war. The Treaty of Paris of 1856, concluded between Great Britain, Austria, France, Prussia, Russia, Sardinia, and Turkey, has a provision "that if there should arise between the Sublime Porte and one or more of the signing Powers any misunderstanding which might endanger the maintenance of their relations, the Sublime Porte and each of such powers, before having recourse to the use of force, shall afford to the other contracting parties the opportunity of preventing such an extremity by means of their mediation." And, further, in the Protocol of the Congress the same powers, on the proposition of the late Earl Clarendon, agreed as follows:—"The plenipotentiaries do not hesitate to express in the name of their governments the wish that States between which any serious misunderstanding may arise, should, before appealing to arms, have recourse, as far as circumstances might allow, to the good offices of a friendly power." It is true that Count Walewski, as representing France, in approving, added—"That the wish expressed by the Congress cannot in any case oppose limits to the liberty of judgment of which no power can divest itself in questions affecting its dignity." Yet it might have been expected that when England appealed to the protocol, and offered mediation, both powers, and France especially, by whom the offensive was taken, should have consented to submit her grievance, in the first instance at least, to the arbitration of two friendly powers. This important concession to public opinion, however, cannot be allowed to be thus foiled, and it is well to consider by what means the agreement may be rendered more operative,

What is wanted is the formation of an International Council composed of the foreign ministers and ambassadors, for the time being, of all the civilized powers, for the determination of any disputes and difficulties which may arise between such States, to be summoned only when such differences arise. We should guard against the admission of any provision, such as that which was taken advantage of to justify France in withdrawing from the agreement on this last and most fatal war to herself. And it ought to be part of the arrangement, on the example of our municipal jurisprudence in matters of arbitration, that should, notwithstanding such formal agreement, any one power refuse to abide by its engagement, the other power or powers should still appeal to the International Council for the determination of the dispute, and the pronouncement of an award, and that the Council should proceed with the consideration of the question without regard to that refusal. Two important advantages would result from such an arrangement. We should obtain from an impartial tribunal a deliberate opinion on any question which might disturb the peace of the world. And we should have the moral weight of the civilized world brought to bear against the nation which, whether as the aggressor or the aggrieved, refuses to abide by its formal agreement, or to comply with the deliberate award of the International Council. I am not proposing, that in case of such refusal all the States should join with the other powers in enforcing the award. We must not fall into the blunders of another Holy Alliance. We must not, with a view, or in the hope of promoting peace, extend the range of quarrels and wars. Moral reforms can only be achieved by moral means. But I do attach the greatest possible weight to an arrangement which might relieve many States from pursuing a course of hostility to a point where it becomes almost impossible to retract. We must count on the moral feeling, on the honour, on the good sense of nations, and we must strive to put some barrier to the first outburst of passions, by retarding the steps which might otherwise inevitably end in open war.

Too long have we seen, with seeming indifference, this grossest outrage against all that is sacred and humane. Too long have we sat with folded arms, witnessing the fatal course which brought one power after another towards a certain ruin. The suggestion I have the honour of making has already received a certain amount of diplomatic sanction. Let it be matured, developed, and strengthened. But, whether by this or by any other means, let us devote our highest effort to remove for ever from the bounds of the civilized world the demon of war. By all that is sacred in the human breast, by all that is noble, enlightening, and elevating in our advancing civilization, by all that animates us to sentiments of affection and amity towards our brother man, all the world over, let us put an end to this grossest and blackest of all crimes, the crime of war. The natural state of man in society is peace, and not war. Let us ask this noblest of all services from International Law, that it may provide means by which nations may live in peace and concord among themselves.

ART. VI.—THE LAW OF ULTERIOR DESTINATION
AS BEARING ON CONTRABAND OF WAR.

THE recent civil war in America presented many cases illustrative of the principles of the Maritime Law of Nations, of which few are more interesting than the law of blockade. For in its connection with contraband of war, and the rule of ulterior destination, or, as it is sometimes termed, *continuous voyage*, a blockade if but moderately well sustained is undoubtedly one of the most effective methods which can be employed by a belligerent in weakening the resources, by cutting off the supplies, of his enemy. But while this is so, it is also well-known that no method, of what we may call negative warfare, is subject to so many disturbing incidents, the effect of which it is almost impossible to avoid. On the one hand, the ships composing the block-

ading squadron may be insufficient in number, or defective in speed, or in calibre; the extent and nature of the coast they are required to cover may be wide and exposed, and they are at any moment liable to dispersion by stress of weather, or may be driven away altogether by a superior force of the enemy. On the other hand, the opportunities presented of evading, or, as it is termed, "running," the blockade, the vicinity of ports belonging to neutral States, which offer facilities for forming depôts of goods intended for the relief of the place invested, the high premium attending the successful venture, the romantic hazard of the attempt itself; these all combine to render blockade a method of warfare, one not only of great uncertainty and difficulty, but which, in its contact with neutral ships, gives occasion to questions of International Law by no means easy of solution.

These almost inseparable incidents to a blockade have given rise to what are called "paper" blockades, or, as they have been termed, blockades by "notification," or "notoriety," as distinct from actual or effective blockades; the former being an attempt to visit neutral vessels with the penalties attending the violation of blockade, while escaping from the necessity of actually employing a force sufficient to draw the required *cordon* round the invested port. But this practice has, at least in modern times, never received any countenance from civilised States; and it is now a well-settled principle of the Maritime Law of Nations, at all events since the armed neutrality of 1780, to which Great Britain became a party by her convention with Russia of January, 1801, that, to use the language of the powers assembled at Paris, in the Congress of 1856, when the subject received much consideration, "blockades in order to be binding must be effective; that is to say, maintained by a force sufficient really to prevent access to the coast of the enemy." *

* And see on this subject of blockades by "Notification," and "Notoriety," *The Betsey*, 1 Ch. Rob., p. 95; the *Mercurius*, *ibid.*, p. 83; "*Northcote v. Douglas*," 10 Moore, P.C. Rep., p. 59.

It is, however, with one only of the incidents to a blockade stated above that we have now to do, that, namely, which arises from the vicinity of neutral ports at a short distance generally from the blockaded coast, which while ostensibly affording a neutral terminus and place of consignment for the cargo, are in reality depôts from which the necessities of the place may effectually be supplied. The voyage, in short, is broken in two. The first stage is between neutral termini; the transport of the cargo assumes the form of a legitimate transaction of commerce, and the ship is free as being the property of a neutral trader. The second stage is for the relief of a belligerent port; the goods are contraband of war, and the vessel, if caught *in delicto*, is from the outset of her hazardous voyage liable, together with her cargo, to capture and confiscation as prize of war. Can these consequences be, by relation back as it were, made to attach on the first stage also? Can a venture, to all intents legitimate, be infected with the taint of contraband, to be inferred from the supposed ulterior intention or purpose in the minds of those engaged in the transaction, or was there "*locus penitentie*," in the intermediate and neutral port? The reply to these questions involves the doctrine of what is known as that of "continuous voyage," or, as some have termed it, "ulterior destination," upon which some difference of opinion has existed, as between the courts of this country and those of the United States, a difference resting on principles which it is now proposed to examine.

The rule to which this doctrine is a corollary is well known. As it is stated by Sir W. Scott, the sailing with an intention of evading the blockade is a beginning to execute that intention, and is an overt act constituting the offence; and from that moment the blockade is fraudulently evaded.* To a similar effect is the language of the Supreme Court of the United States in one of the most recent cases on the subject, in which the doctrines underwent examination.

* The *Columbia*, 1 Rob. Rep., p. 154.

"It is," said Chief Justice Chase, "a well established principle of prize law as administered by the Courts of the United States and of Great Britain, that sailing from a neutral port with intent to enter a blockaded port, and with knowledge of the existence of the blockade, subjects the vessel, and in most cases the cargo, to capture and condemnation.* We are entirely satisfied with that rule. It was established with some hesitation when sailing vessels were the only vehicle of ocean commerce; but now when steam and electricity have made all nations neighbours, and blockade running from neutral ports seems to have been organised as a business, and almost raised to a profession, it is clearly seen to be indispensable to the efficient exercise of belligerent rights. It is not likely to be abandoned until the nations by treaty shall consent to abolish capture of private property on the seas, and with it the whole law and operation of commercial blockade."†

Acting therefore upon this view of the law, it was decided by the Court that a vessel sailing from a neutral port, with intent to violate a blockade, is liable to capture and confiscation as prize from the time of sailing; and that the intent to violate the blockade is not disproved by evidence of a purpose to call at another neutral port, *not reached at the time of capture*, with ulterior destination to the blockaded port; and further, that evidence of intent to violate blockade may be collected from bills of lading of cargo, from letters and papers found on board the captured vessel, from acts and words of the owners and hirers of the cargo and their agents, and from the spoliation of papers in apprehension of capture.

So far as regards the destination of the vessel itself; in the case in question, however, the Court proceeded to deal with the cargo, and in doing so gave, as will be seen, to the doctrine of continuous voyage an extension of which it had not before been considered as capable.

"Neutrals," said the Chief Justice, "may sell in their own

* *Yeaton v. Fry*, 5 Cranch, 335; 1 Kent Com., p. 150; the *Frederick Molke*, 1 Rob., 72.

† The *Circassian*, 2 Wallace's Rep. (Supreme Court) p. 135, and see the *Admiral*, *ibid.* 3, p. 603.

country to belligerents whatever belligerents may choose to buy. The principal exceptions to this rule are that neutrals must not sell to one belligerent what they refuse to sell to the other; and must not furnish soldiers or sailors to either, nor prepare, nor suffer to be prepared, armed ships, or military, or naval expeditions against either. So, too, neutrals may convey in neutral ships, from one neutral port to another, any goods, whether contraband or not, if intended for actual delivery at the port of destination, and to become part of the common stock of the country, or of the port. . . British merchants had, as neutrals during the war, a perfect right to trade, even in military stores, between their own ports, and to sell at one of them goods of all sorts, even to an enemy of the United States with knowledge of his intent to employ them in rebel war against the American Government, provided only the trade were a real trade, in the course of which goods, conveyed from one port to another, became incorporated into the mass of goods for sale in the port of destination, and provided sale means sale to *either belligerent* without partiality to either. If, however, there was an intention, or, as the Court termed it in a recent case in this country, 'a mental process,' of sending the goods forward to a blockaded port, it has been held that there is, as far as the cargo is concerned, one continuous voyage which cannot be broken by any transaction at the intermediate port, by their being unladed, transhipped, transferred from hand to hand, or even sold, unless it be a *bona fide* sale in the market. They are, therefore, liable to capture and confiscation on the outward voyage to the neutral port. So also is the ship, unless there be reason to conclude that her owners were ignorant of the ulterior destination of the cargo, and did not hire their ship with a view to it. But if the ulterior destination is the known inducement to the partial voyage, and the ship is engaged in the latter with a view to the former, then whatever liability may attach to the final voyage must attach to the earlier undertaking with the same cargo, and in continuity of conveyance. The ships are planks of the same bridge, all of the same kind, and all necessary to the convenient passage of persons and property from one end to the other." *

* The *Bermuda*, 3 Wallace's Rep., 514. The *Stephen Hart*, *ibid.*, 559. The *Springbok*, *ibid.*, v. 1.

This decision has given to the doctrine of continuous voyage an important influence, as bearing upon and restricting the privileges of neutral States. The principle itself has been considered to take its rise from what is known as the Rule of War of 1756, under which a neutral cannot carry on trade between a belligerent country or its colonies if he were excluded from that trade in time of peace. It is thus spoken of by Sir W. Scott, in a celebrated judgment,* which states very clearly the law as it then existed, and which indeed may be said to have given the rule much of the influence which it exercised on the colonial trade of an enemy during the earlier part of the present century. Regarding the question as affecting neutral property, he observes:—

“Upon the breaking out of a war it is the right of neutrals to carry on their accustomed trade, with the exception of the particular cases of a trade to blockaded places or in contraband articles (in both which cases their property is liable to be condemned), and of their ships being liable to visitation and search; in which case, however, they are entitled to freight and expenses. I do not mean to say that in the accidents of a war the property of neutrals may not be variously entangled and endangered; in the nature of human connections it is hardly possible that inconveniences of this kind should be altogether avoided. Some neutrals will be unjustly engaged in covering the goods of the enemy, and others will be unjustly suspected of doing it; these inconveniences are more than balanced by the enlargement of their commerce; the trade of belligerents is usually interrupted in a great degree, and falls in the same degree into the lap of neutrals. But without reference to accidents of the one kind or the other, the general rule is, that the neutral has a right to carry on in time of war his accustomed trade, *to the utmost extent of which that accustomed trade is capable*. Very different is the case of a trade which the neutral has never possessed, which he holds by no title of use and habit in time of peace, and which in fact can obtain in war by no other title than

* *The Immanuel*, 2 C. Rob., p. 286.

by the success of the one belligerent against the other, and at the expense of that very belligerent under whose success he sets up his title."

Such being the rule under which a neutral could not export goods *directly* from the mother country of the enemy to its colonies, it is plain that it was susceptible of evasion by the simple expedient of the neutral first importing such goods to his own country, so as to make them part of the national stock of that country, and then exporting them to the enemy's colonies. And hence arose questions, of some difficulty then, and of still greater difficulty and embarrassment now, as to what amounted to a direct trade, or what was to be regarded as an intermediate *bonâ fide* importation to a neutral country. And though the Rule of War of 1756 has become obsolete, inasmuch as the free trade which England has thrown open to the navigation of the world enables other nations to participate in her colonial and coasting trade on an equality with her own vessels, and has thus practically repealed a law which had its foundation in a monopoly, yet from the extension which, as has been observed, the doctrine of continuous voyage (a direct inference from the rule of 1756) has received, the decisions of English and American Courts of Prize on the interpretation of the rule must continue to be referred to, and have always in the most recent cases been cited, as containing a correct exposition of the law of nations on the subject. The principles upon which Courts of Admiralty act in determining such questions have been so well stated in a celebrated judgment of Sir W. Grant, in the leading case of the *William*,* in which will be found an elaborate examination of the decisions, that we make no apology for giving the following extract:—

"What, then," said the learned judge, "with reference to this subject is to be considered a *direct voyage* from one place to another?

* 5 C. Rob., 385; Lords, March 11, 1806.

Nobody has ever supposed that a mere deviation from the straightest and shortest course in which the voyage could be performed would change its denomination, and make it cease to be a direct one within the intendment of the instructions. Nothing can depend on the degree or the direction of the deviation, whether it be of more or fewer leagues, whether towards the coast of Africa, or towards that of America. Neither will it be contended that the point from which the commencement of a voyage is to be reckoned changes as often as the ship stops in the course of it; nor will it the more change because a party may choose arbitrarily, by the ship's papers or otherwise, to give the name of a distinct voyage to each stage of a ship's progress. The act of shifting the cargo from the ship to the shore, and from the shore back again into the ship, does not necessarily amount to the determination of one voyage and the commencement of another. It may be wholly unconnected with any purpose of importation into the place where it is done. Supposing the landing to be merely for the purpose of airing or drying the goods, or of repairing the ship, would any man think of describing the voyage as beginning at the place where it happened to become necessary to go through such a process? Again, let it be supposed that the party has a motive for desiring to make the voyage appear to begin at some other place than that of the original lading, and that he therefore lands the cargo purely and solely for the purpose of enabling himself to affirm that it was at such other place that the goods were taken on board, would this contrivance at all alter the truth of the fact? Would not the real voyage still be from the place of the original shipment, notwithstanding the attempt to give it the appearance of having begun from a different place? The truth may not be always discernible, but when it is discerned, it is according to the truth, and not according to the fiction, that we are to give to the transaction its character and denomination. If the voyage from the place of lading be not really ended, it matters not by what acts the party may have evinced his desire of making it appear to have ended. That those acts have been attended with trouble and expense cannot alter their quality or their effect. The trouble and expense may weigh as circumstances of evidence, to show the purpose for which the acts were done; but if the

evasive purpose be admitted or proved, we can never be bound to accept, as a substitute for the observance of the law, the means, however operose, which have been employed to cover a breach of it. Between the actual importation by which a voyage is really ended, and the colourable importation which is to give it the appearance of having ended, there must necessarily be a great resemblance. The acts to be done must be almost entirely the same; but there is this difference between them—the landing of the cargo, the entry at the Custom House, and the payment of such duties as the law of the place requires, are necessary ingredients in a genuine importation; the true purpose of the owner cannot be effected without them. But in a fictitious importation they are mere voluntary ceremonies, which have no national connection whatever with the purpose of sending on the cargo to another market, and which therefore would never be resorted to by a person entertaining that purpose except with a view of giving to the voyage which he has resolved to continue the appearance of being broken by an importation which he has resolved not really to make.”*

These extracts, from the judgments of Sir W. Grant and Sir W. Scott, will place our readers in a position to understand the development which this doctrine of continuous voyage has received at the hands of American judges, and this we shall now proceed to notice. But, in connection with the doctrine in question, the difference that formerly obtained between cases of breach of blockade and those of contraband of war should clearly be kept in view. . Contraband, it was held, if met with on the high seas, was always subject to capture and confiscation as prize; whereas ships and cargoes, on their way to a blockaded place, were not, as far as the decisions went which have been quoted, of necessity so, unless the offence was established of an intended or actual breach of blockade. And as a blockade was an act of maritime warfare only, and could only be maintained by sea, if the final stage of transit

* And see the *Polly*, 2 Rob., 361; the *Maria*, 5 C. Rob., 365.

of the goods, the last plank, so to speak, of the bridge, was by way of inland navigation, as by river or canal, or overland, there was held to be no offence, because there could, in such a case, be no breach of a blockade, inasmuch as the taint of the voyage was purged when the goods were landed. And it was in breaking in upon this principle that the alteration in the law, occasioned by recent American decisions, mainly consisted; for they held that, in deciding the question as to which was to be regarded, the ultimate, or the immediate, or ostensible, destination of *the cargo*, as distinct from the ship, not only cases were to be included which came within the Rule of War of 1756, but also those where a subject of the capturing power was supposed to be trading with the enemy, or a neutral engaged in sending contraband of war, and generally every case in which the destination of a vessel, or cargo, was material.*

The leading case on this subject in the American courts is the *Commercen*,† in which, as Professor Dana has observed, the question was discussed with great learning and ability, and the arguments in which, it may be added, will be full of value to the student of International Law. It was there decided by the Supreme Court of the United States, that if goods were destined for the avowed use of the enemy's army or navy, they are liable to forfeiture even though the property of a neutral; and, further, that the destination to a neutral port could not vary the application of the rule, inasmuch as it was only doing that indirectly which, in direct courses, was prohibited. In this celebrated case, which gave rise to a remarkable difference of opinion amongst the eminent jurists who then had seats in the Supreme Court, the facts were that a Swedish vessel was carrying a cargo of provisions, the property of English merchants, to a Spanish port, there to be delivered to the British army engaged in hostilities against France in Spain.

* Note by Professor Dana, Wheaton, Inter. Law, p. 508.

† Wheaton's Rep., p. 382.

Great Britain was at the time at war with the United States; but between France and the United States there was no alliance or common action. Sweden and Spain were, on the other hand, allies of Great Britain in the war against France, but were neutral in the war against the United States. The cargo was condemned as enemy's property, but the ship was released; and in the Court below, the District Court of Maine, freight was allowed according to the rule of the *Consolato del Mare*, and the ancient practice in cases where enemy's goods are captured on board a neutral vessel. But Mr. Justice Story, in the Circuit Court of the United States,* reversed the judgment of the Court below so far as it allowed freight, and held that though, strictly speaking, it was not a question of contraband, for that can arise only when the property belongs to a neutral, and in this case the property belonged to an enemy, yet that the ship-owner in carrying provisions for public use, and under a public contract, was assisting the military operations of the enemy. He pronounced, accordingly, the voyage to be illicit, and inconsistent with the duties of neutrality equally as the carrying of enemy's despatches, or the conveyance of military persons in his employ; and this decision was confirmed by the Supreme Court, who held, however, that it made no difference, as against the confiscation of the ship and cargo, that the enemy is carrying on a distinct war in conjunction with his allies *who are friends of the captor's country*, and that the provisions were intended for the supply of his troops engaged in that war, or that the ship in which they are transported belonged to the subjects of one of those allies. Chief Justice Marshall, however, and two other judges, differed from this conclusion, and were of opinion that a remote and consequential effect of an act was not sufficient to give it a hostile character; its tendency to aid the enemy in the war must be direct and immediate.

It is to be observed, however, that although this case is

* 2 Gall. Rep., p. 260.

relied upon, and commonly referred to, as having given great extension to the doctrine of continuous voyage in connection with contraband of war, questions which at the same time were indirectly involved, and which supplied considerations which influenced the opinions of the majority, it in reality turned upon another point, that, namely, of the service in which the ship was engaged having given her an enemy character, in which view her destination became immaterial. The group of cases* decided at the close of the recent civil war in America are those which must rather be cited as having placed the doctrine of continuous voyage on its present footing, which, if the principles of public maritime law then laid down are adhered to, will greatly restrict the privileges of the neutral trader. From the case of the *Circassia* we have quoted at the commencement of this article, and the principle to which that decision gave effect was recognised in the case of the *Peterhoff* before the Supreme Court of the United States, where the whole question underwent examination, in a case which was described by the Chief Justice as "one of much interest, very thoroughly argued, and attentively considered." In his judgment Chief Justice Chase thus states his view of how the law on this subject at present stands:—

"It is an undoubted general principle, recognised by the Court in the case of the *Bermuda*, and in several other cases, that an ulterior destination to a blockaded port will infect the primary voyage to a neutral port with liability for intended violation of blockade. The question now is whether the same consequence will attend on an ulterior destination to a belligerent country by inland conveyance, and upon this question the authorities seem quite clear—that the ship and cargo are in such a case free from liability for violation of blockade. *But contraband merchandise is subject to a different rule in respect to ulterior destination than that which applies to merchandise not contraband.* The latter is liable to capture only when a violation of blockade is intended; the former, when destined to the

* The *Circassia*, 2 Wallace, Rep., 135; the *Bermuda*, 3 *ibid.*, 514; the *Stephen Hart*, *ibid.*, 559; the *Peterhoff*, 5 *ibid.*, p. 28.

hostile country, or to the actual military or naval use of the enemy, whether blockaded or not. The trade of neutrals with belligerents in articles not contraband is absolutely free, unless interrupted by blockade; the conveyance by neutrals to belligerents of contraband articles is always unlawful, and such articles may always be seized during transit by sea. Hence, while articles not contraband might be sent to Matamoras—a neutral port—and on to the rebel region, where the communications were not interrupted by blockade, articles of a contraband character, destined in fact to a State in rebellion, or for the use of the rebel military forces, were liable to capture, though primarily destined to Matamoras. We are, therefore, obliged to conclude that the portion of the cargo which we have characterised as contraband must be condemned.”

And again, yet more strong is the statement of the doctrine by the same learned judge in the *Bermuda*.* In this case it was *inter alia*, decided that (1.) While goods of every description may be conveyed from neutral ports to neutral, if intended for actual discharge at a neutral port, and to be brought into the common stock or merchandise of such port, voyages from neutral ports intended for belligerent ports are not protected in respect to seizure, either of ship or cargo, by an intention, real or pretended, to touch at an intermediate neutral port. (2.) That neutrals may convey to belligerent ports, not under blockade, whatever belligerents may desire to take, except contraband of war, which is always subject to seizure when being conveyed to a belligerent destination, whether the voyage be direct or indirect. Such seizure, however, except in cases of fraud, being restricted to actual contraband. (3.) Vessels conveying contraband to belligerent ports not under blockade under circumstances of fraud, or cargo of any description to blockaded ports, are liable to seizure and condemnation from the commencement of the voyage; and (4.) That a voyage from a neutral to a belligerent port is one and the same voyage, *whether the destination be ulterior or direct*, and

* 3 Wallace, Rep., p. 514.

whether with or without the interposition of one or more intermediate ports; or whether to be performed by one vessel, or several engaged in the same transaction and in the accomplishment of the same purpose.

"There seems," said the Chief Justice, "to be no reason why the reasonable and settled doctrine applied by Sir W. Grant, in the case of the *William*, to the cargo should not be applied to each ship, when several are engaged successively in one transaction, namely, the conveyance of contraband cargo to a belligerent. The question of liability must depend on the good or bad faith of the owner of the ships. If a part of a voyage is lawful, and the owners of the ship conveying the cargo in that part are ignorant of the ulterior destination, and do not hire their ship with a view to it, they are not liable to condemnation. But if the ulterior destination is the known inducement to the partial voyage, and the ship is engaged in the latter with a view to the former, then whatever liability may attach to the final voyage must attach to the earlier, undertaken with the same cargo and in continuity of conveyance. Successive voyages, connected by a common plan and a common object, form a plural unit. They are links of the same chain, each identical in description with every other, and each essential to the continuous whole."

The extracts here presented to the reader have, it will be seen, an interest of their own at the present time, beyond the subject immediately under discussion, as being the latest utterances of Courts of Prize on the vexed question of neutrality in connection with trade, according as that trade is, or is not, contraband of war, or destined for a blockaded port. But the point they have been chiefly cited to establish is the gradual inroad made on neutral privileges by the extension of the rule of continuous voyage beyond the limits set to the doctrine by the Lords of Appeal in the case of the *William* in the following respects:—First, in its application to both ship and goods; for hitherto as the law had been expounded by the Court of Appeal, it had not been customary, where the port for which the ship

was bound was *bonâ fide* a neutral one, to inquire into the destination of the cargo. Secondly, in the doctrine being for the first time applied to breaches of blockade and conveyance of contraband of war, and generally, as has been stated before, to every case in which the destination of the vessel or cargo is material, whereas formerly it had been regarded as confined solely to cases arising out of the Rule of War of 1756, or when belligerent subjects were engaged in carrying on a secret trade with the enemy. And, thirdly, in what may be termed the principle of relation back, whereby the rule of continuous voyage or "ulterior destination" was made to include articles contraband of war, consigned to a neutral port, the last stage of whose journey was to be effected, and could only be effected, by overland conveyance across neutral territory; in fact, enunciating the principle that, as Professor Bernard states it, "the fate of contraband articles found at sea on board of a neutral vessel, and the liability of the neutral vessel to the consequences of carrying contraband, depend, in all cases, upon what a prize court may regard as the ultimate destination of the goods, no matter how that destination is to be reached."*

It is proper to add that on these points the courts in this country do not appear to acquiesce in the conclusions at which the Supreme Court of the United States have arrived in this question. The case of the *Peterhoff* was in another form (as a cause of marine insurance),† argued before the Court of Common Pleas, and in delivering the judgment of the Court, the Chief Justice Erle distinctly held that the defendant could not rely on the proximity of Matamoras to the Confederate States, nor could its position be the subject of judicial notice.

"If the goods," he observed, "were in course of transport from a neutral to a neutral port, the better opinion (see the authorities

* Neutrality of Great Britain, p. 316.

† *Hobbs v. Hemming*, 17 Com. Bench, N.S., p. 819.

collected in 'Ortolan's Diplomatic de la Mer,' Vol. II., p. 181), seems to be that war does not give to a belligerent any right to seize them on account of their quality. The allegation that the goods were shipped for the purpose of being sent to an enemy's port is an allegation of a mental process only. We are not to assume, therefore, either that the plaintiff had made any contract, or provided any means, for the further transmission of the goods into an enemy's State, or that the shipment to Matamoras was an unreal pretence. If the goods were in course of transshipment, not to Matamoras, but to an enemy's port, the voyage would not be covered by the policy, and that defence is raised in direct terms by the third plea. Here the allegation does not deny the destination to the neutral port to which the insurance relates, but introduces a purpose existing in the mind of the assured *after the termination of the voyage*, for the ulterior disposition of the cargo and ship. It is consistent with that purpose, as here alleged, that the plaintiff made the consignment for mercantile profit as the end to be attained by him, in other words that he knew of an effective demand for war-like stores at Matamoras, and was induced to send a supply by expectation of a high price, and that he expected that the purchase would probably be made on behalf of the Confederate States, and in that sense had the purpose that the goods should pass into those States. In this sense price was the ultimate end which he purposed to attain, and Federal and Confederate were alike indifferent as means, provided he attained that end, and in a neutral territory he could lawfully sell to either."

After observing on the distinction between a mere mental purpose that an unlawful act should be done, and a participation in the unlawful transaction itself, as illustrated by the cases of *Holman v. Johnson*,* and *Lightfoot v. Tennant*,† the Chief Justice proceeded :—

"If goods fit for immediate use in war, and therefore of the quality denoted by the term contraband of war, are passing between neutrals, it seems that they are not liable to seizure by a belligerent. The right of capture, according to Sir William Scott's opinion,

* Cowp., p. 341.

† 1 B. & P., p. 551.

expressed in the case of the *Imina** attaches only when they are passing on the high seas to an enemy's port. The liability, therefore, of these goods to lawful seizure, although their quality were such as to make them contraband of war, *depended on their destination*, and they were not liable unless it distinctly appeared that the voyage was to an enemy's port."

From this case, therefore, it may be inferred that if the doctrine of ulterior destination should again come for argument before the courts in England, it would probably be discussed and determined in a spirit less antagonistic to neutral rights than that on which the American judges proceeded, and more in harmony with the decisions of Lord Stowell, and Sir W. Grant, which had previously been accepted as the correct exposition of the Law of Nations on this interesting question.

It may, in conclusion, be important to our readers to note, as bearing upon the question so much discussed at the present time, of what constitutes contraband of war, to observe that the Supreme Court of the United States have laid down, in the most recent case on the subject, to which reference has been already made,† that the classification of goods as contraband and not contraband, which is best supported by American and English decisions, divides all merchandise into three classes. First, articles manufactured, and primarily or ordinarily used for military purposes in time of war. Secondly, articles which may be, and are, used for purposes of war or peace according to circumstances; and thirdly, articles exclusively used for peaceful purposes. Of these, merchandise of the first class destined to a belligerent country, or places occupied by the army or navy of a belligerent, is always contraband; merchandise of the second class is contraband only when actually destined to the military or naval use of a belligerent; while merchandise of the third class is not contraband at all, though liable to seizure and condemnation for violation of blockade or siege.

* 3 Rob., p. 167.

† The *Peterhoff*, 5 Wall., Rep., p. 28.

ART. VII.—THE LORDS' AMENDMENTS TO THE
MARRIED WOMEN'S PROPERTY BILL. By
JACOB WALEY, Barrister-at-Law.

THE following observations were suggested by certain objections which have been made to the Lords' amendments to the Married Women's Property Bill, both on grounds of general principle, and in respect of the increased protection to married women being given by an extension of the equitable doctrine of separate use.

The old theory of English law with regard to the property of a married woman—at all events with regard to her personal property—is, that the husband takes all the property, and with it the obligation of providing for his wife and family. This view, broadly carried out, would no doubt fall very short of the exigencies of modern social life; but, on the other hand, it is an exceedingly one-sided exposition to treat it (as has not unfrequently been done) as equivalent to confiscation—as placing a married woman on the level of a felon. To do this is to separate the right from its correlative obligation, to fix one's attention exclusively on the transfer of property and overlook the onerous condition with which it is accompanied.

The equitable modifications to which the strict legal rule has been subjected, the growth of the doctrine of separate property, protecting a married woman from marital compulsion, and of the restraint on anticipation by which she is shielded from influence, are well known. Less familiar, perhaps, though practically operating in almost every home supported by an expenditure which is to any extent derived from a married woman's settled property, is the rule of Equity, which presumes the consent of the wife to the receipt by her husband (while living with and maintaining her) of her separate income, and debars her from requiring

a retrospective account of its application. The effect of this is in general to give to the husband the administration of the wife's separate income, and to put the wife's separate right in abeyance, except under such unfortunate domestic circumstances as drive her to its assertion. The various equitable modifications of the husband's proprietary right (including the wife's equity to a settlement—that is to say, her right to a provision for herself and her children out of property not settled to her separate use) are created by contract or quasi-contract, including, under the head of contracts, dispositions, such as a will, made by the owner in right of his ownership and not the result of any actual agreement between two or more contracting parties, and treating as quasi-contractual, rights and obligations which are not founded on stipulation or disposition, but have been created by Courts of Equity, to give effect to their views of what is required by duty and justice.

Now, I think it may be said, with something like broad and general truth, that the Married Women's Property Bill, as passed in the Commons, discarded altogether the prior system, and was founded on the primary rule of a woman's proprietary rights being unaffected by her marriage, this rule being modified by grafting on it provisions for the protection of the wife against marital compulsion and influence similar to those obtaining under the prior law; while the Act in its present shape (not differing materially from that in which it passed the Lords), recognises and upholds the prior system, under which marriage *primâ facie* operates as a transfer of property to the husband, coupled with the obligation of maintaining his wife and family; but enlarges and multiplies the quasi-contractual exceptions to this rule in order to meet existing social and moral exigencies. For my own part, I hold strongly to the opinion that the usages and requirements of society are most faithfully reflected and most judiciously carried out by a system, giving to the husband, in ordinary cases at least, the irresponsible admin-

istration, if not the ownership, of his wife's property: Large modifications and exceptions to this rule, varying under different moral and social conditions, will no doubt be required, in order to provide a just and reasonable matrimonial code, but while the marriage tie is what it is, I cannot conceive that entire independence, as regards her property, either ought legally to be conferred on the wife, or can practically be exercised by her. This, however, is a matter as to which the arguments on both sides are already familiar, and I only refer to it as a ground for my own approval of the alteration in the frame of the Act made by the Lords.

I may also name another ground on which the alterations made by the Lords appear to me conducive to the public interest. In the present shape of the Act, the whole body of existing jurisprudence on the law of property as between husband and wife, will be available for the guidance of our tribunals. In cases not expressly provided for by the Act the prior law will be followed. Cases within the provisions of the Act will be brought within the operation of well-known rules and principles, and will be easily dealt with. On the other hand, the Bill, as it passed the Commons, was destructive even more than constructive. It swept away all the existing fabric of law on this subject, and substituted for it mere foundations, on which the new system would have had to be built by a series of judicial decisions. Unless I am greatly mistaken in my estimate of the Bill as originally framed, it must have been worked out by means of a vast amount of litigation, bringing discord and misery into a multitude of homes.

There is, however, another objection made to the Lords' amendments which raises a question of wide scope and of deep interest. It is said that the extension of equitable remedial jurisdiction, created by means of the Lords' amendments, is at variance with the progress towards a fusion of Law and Equity. It is well worth endeavouring to test the soundness of this assertion, and to examine for that purpose in what

sense and with what results we may look forward to a fusion of Law and Equity.

I must in the first place observe that, had the Bill preserved its original frame, the law of property as between husband and wife would still have been a matter partly of legal and partly of equitable jurisdiction. The preservation of separate use and restraint on anticipation when created by contract, which, indeed, could not have been abandoned without materially enlarging the scope of marital influence, and, to the same extent, lessening the protection given to married women, must have had this result. At most, therefore, the enlargement of the equitable jurisdiction for the protection of married women would have the effect of augmenting the proportion in which cases on this branch of the law will come under the cognizance of a Court of Equity. Such cases, anyhow, would not have been wholly removed from the cognizance of Equity to that of Common Law, but would necessarily come partly under the one jurisdiction and partly under the other.

Let us, then, endeavour to ascertain how a body of rights and obligations, now partly legal and partly equitable, would be dealt with upon the assumption of a fusion of Law and Equity. This is no doubt a difficult matter to follow out, and one may reasonably ask for indulgence for some want of clearness and certainty in dealing with considerations so novel and intricate. I assume, however, that the union would be effected in the mode proposed, and which appears to me the right one, namely—by a fusion of tribunals, and by enacting that, when Law and Equity are at variance, the consolidated tribunal should give effect to the equitable doctrine. In this manner the law actually administered would be, as it were, the resultant of the potential action of the now existing courts.

It may at first sight seem that, with the multiplicity of tribunals, and the separation of jurisdiction, the arbitrary distinction between the substantive rules of Law and Equity would also disappear; that, for example, the imperfect and

subordinate proprietary rights now recognised as legal and equitable rights would fade away, and be replaced by a single ownership, with rights regulated, not by the technical niceties of law, but by the substantial requirements of the case. A little consideration, however, and attention to one or two examples, seem to me to show that this view is untenable. It will, of course, be remembered that by our supposition, the object is to preserve unimpaired the substantive rights given by the existing system of Law and Equity, while entrusting the vindication of those rights to one tribunal, having full command over all the remedies now attainable either at Law or in Equity, and, it may be added, acting under a uniform code of procedure.

Take the very common case of land vested at law in trustees having active duties as to management, leasing, &c., but of which the net income belongs to a beneficiary. We now say that the legal estate is in the trustees, but that the beneficiary is entitled in Equity. Now, suppose that the fusion of Law and Equity has been effected, is it not obvious that the trustees must still be recognised as owners in actions against trespassers or against the tenants, while as between them and the beneficiary the fruits of ownership belong to the latter? The interests of the fiduciary and beneficial owner will remain perfectly distinct and capable of assertion according to the circumstances, whether they continue to be called the legal and equitable estates, or, under the altered conditions of the case, are called by other names. I think it probable, however, that as a matter of convenience the old names would be retained.

Now take the yet commoner case of stocks or shares, or policies of assurance vested in trustees, in trust for persons in succession. All the rights and obligations of the trustees and beneficiaries *inter se*, and of each, with regard to third persons, would remain unaltered after the fusion of Law and Equity, and the vast body of equitable law relating to trusts would still have to be administered by the consolidated tribunal.

These examples might be multiplied, and yet more striking examples might be given, in which, unless an alteration is made in the existing substantive law, bare legal estates, the mere creation of technical law, must preserve a notional existence, in order to prevent priority of rights from being disturbed. The inference that I draw is that after a fusion of Law and Equity the scandals arising from a failure of justice, in consequence of the insufficiency of the jurisdiction of the court applied to—from the court being compelled to see only one half of the case, and pronounce its judgment without reference to the other half—from incongruous and discordant systems of procedure—may be got rid of. Complete justice, administered on a survey of the whole case, and preceded by an investigation conducted according to uniform principles in the manner best suited to the circumstances, may proceed from a tribunal whose jurisdiction is bounded only by the law of the land. But as long as substantive rights remain unaltered, the old technical and subtle distinctions on which they are to a great extent founded, and which are interwoven with them to a degree not to be understood without a practical acquaintance with the working of the law, must remain pretty much what they are now. In order to simplify and (as far as may be) abrogate these distinctions, no remedy will be available short of codification.

To return to the Married Women's Property Act, the bearing on that subject of the latter part of these observations is the following. The fusion of Law and Equity will leave untouched the existing mass of substantive law, whether of the kind called Common Law or Equity. The distinctions abounding in both branches of jurisprudence, and even the distinctions between them will not be obliterated, and in fact will statically remain much as before, the main effect of the fusion being felt in what have been called the dynamics of law, that is, in the remedial action of the courts. The equitable doctrines of separate use and restraint on anticipation will still define a modification of

interest applicable to the property of married women only, and the complexity of the body of law applicable to the property of married women will not be increased, nor will the fusion of Law and Equity, in the sense in which it is possible, be impeded, by the large class of cases in which relief is given by the recent Act being brought within this equitable doctrine.

ART. VIII.—NOVATION OF CONTRACT.

WITHIN the course of the last year this phrase has become one of serious import to some thousands of persons. Transactions long ago supposed to have been settled, liabilities long thought to have been escaped, have been revived. We propose briefly to examine the recent decisions on the subject of "Novation of Contract," with the view of suggesting the practical course to be adopted by those affected by them.

The term "novation" is borrowed from the Roman law ("Institutes of Justinian," Lib. III., title 29, s. 3). The learning of the Roman jurists on the question may be found in "Pothier on Obligations."* The word "novation" finds no place in the dictionaries of English law, such as Cowel's "Interpreter," or Tomlins's "Law Dictionary."†

It was used by Sir Roundell Palmer in his argument in the case of *Rolfe v. Flower* ‡ (1866). That, however, was an appeal to the Privy Council from the colony of Victoria; and colonial legislation frequently adopts features of the Roman law, either directly, or through the medium of the Scottish or French law. In that case, though Sir Roundell

* Ed. Evans. Pp. 380-396, n. 546. † Ed., 1835.

‡ Law Rep., 1 P.C., 27.

Palmer is reported to have incidentally used the term "novation," yet the headline is "Liability of new firm for debts of old."

Though the word is not an English law term, it has been used of late to describe the act by which a creditor discharges his debtor, and accepts another in his place. In the old cases, this is described by the simple expression, "discharge of debtor." This expression is preferable, for although the discharge may be the consequence of the "novation," the real question to be determined is, whether there has been a discharge, not whether there has been a "novation."

The term "novation" seems first to have crept into judicial use in England in the judgment of the lamented Lord Justice Giffard in the case of *Ex parte Gibson** (1869). There "novation of debt" appears in the headline of the report; and counsel are reported to have quoted the word "novation" from the judgment of Lord Justice Wood in the case of *the Commercial Banking Corporation of India and the East*† (1868). No such expression appears, however, in the report of that case; where the headline is "Release of debtor by creditor and substitution of a new debtor."

Since then, however, the cases on the question of discharge of debtors have been usually called "Novation of contract." It has happened that, with the new phrase, a new phase of the old doctrine has been presented. The earlier cases related chiefly to the retirement or accession of partners in an ordinary partnership; the more recent ones arise out of the attempted substitution of one public company for another.

The definition of "novation" by Pothier is, "the substitution of a new debt for an old;" and the particular form of substitution involved in these cases appears to be that defined by him as "delegation." For this the consent

* Law Rep., 4 Ch. App., 662.

† 16 W.R., 958.

of three parties is necessary—the original debtor, the proposed substitute debtor, and the creditor. The doctrine of the English law as to discharge of debtors is the same.

The point at issue, in most of the cases, is whether there is evidence sufficient to prove this assent on the part of the creditor. The creditor may expressly reserve his rights against the original debtor, in which case there is, of course, no discharge (*Bedford v. Deakin*, 1818*). He must have the inducement of a fresh security as the consideration for the release, or there is no discharge (*Lodge v. Dicus*, 1820†).

The acceptance of security from the alleged substitute debtor would of itself be strong evidence that the original debtor was released. “Is it to be endured that he should hold both liable?” said Lord Kenyon, in *Evans v. Drummond* (1801)‡. Whether there has been a discharge is a question of fact for a jury (*Thompson v. Percival*, 1834§). A creditor might retain both rights (*Harris v. Farwell*, 1851.§)

If the creditor, without remark, continues to deal with the new partnership on the footing of the old contract, that is no evidence of an intention to discharge the old partnership from the debt; but if, with knowledge of the change in the partnership, he makes any alteration in the contract (such as a change in the rate of interest), that is evidence of intention to discharge the original debtors, and accept the substitute debtors (*Hart v. Alexander*, 1837¶). “Where a partner retires, and a customer has notice, and continues his dealings, without making any claim on the retired partner, a jury may, from circumstances, presume that the customer agreed to discharge him” (Vice-Chancellor Wigram in *Benson v. Hadfield*, 1844**). “A very little will do to make out an assent by creditors” (Lord Eldon in *Ex parte Williams*, 1817††).

* 2 B. & A., 210.

† 3 B. & A., 611.

‡ 4 Esp., N.P.C., 89.

§ 5 B. & Ad., 925.

§ 15 Beav., 31.

¶ 2 M. & W., 484.

** 5 Beav., 546; on appeal, 4 Hare, 32.

†† Buck, 13.

With regard to ordinary partnerships, these principles have been sustained in a multitude of cases. In the words of Lord Romilly, "the law is clear and distinct; the discharge is a question of fact—it may be express or implied." We proceed to consider the recent application of these principles to attempts by one company to transfer its liabilities to another.

In the several cases under the heading of *The Era Assurance Company*, the point as to the assent of the creditor did not arise, but it is convenient to state the substance of the successive decisions, as bearing on our general question. The Saxon Assurance Company transferred its business and debts to the Era, and among them a debt due to one Williams. Both companies were winding-up in 1860. Williams claimed to be a creditor of the Era for the balance of his debt, and the Era of the Saxon for the sums they had paid him and others since the transfer. Vice-Chancellor Wood disallowed both claims; that of Williams on the ground that the transfer was beyond the powers either of one company or the other, and was invalid from the beginning (2 J. & H., 400); that of the Era on the ground that it was impracticable to replace the companies in the position in which they had stood before the transfer (2 J. & H., 408). Upon appeal by the Era Company to the Lord Justices, this decision was sustained; but the reason given for it was disapproved, and the Lords Justices expressed an opinion that the transfer was within the power of the companies (1 D. J. & S., 29). Upon that decision, Vice-Chancellor Wood reheard the claim of Williams, and (while adhering to his previous opinion) admitted that claim, in deference to the opinion of their lordships (1 H. & M., 672).

The case of *The Commercial Banking Corporation of India and the East* (16 W.R., 958, 1868), already referred to, arose out of a transfer of business to that Company from one with a somewhat similar name. The transferee company had paid the usual dividends on his debt to the creditor's

agent, but it did not appear that the creditor had had any intimation of the transfer. The Lords Justices (Wood and Selwyn) held that he had acquired no rights against the transferee company, and that "there must be distinct knowledge by the creditor of the change, and an acquiescence plain and sufficient after that knowledge has been acquired" to establish a release of the original debtor, and a substitution of the new one.

Ex parte Gibson, already referred to (4 Ch. App., 662, 1869), arose on the transfer of the business of a private firm to a limited liability company. The creditor had expressly repudiated the company, and declared that he dealt with the partners of the old firm as individuals, but had afterwards applied for and obtained a payment of interest from the company. Upon this, the Master of the Rolls admitted him as a creditor of the company. Upon appeal, the order was reversed by the Lord Justices, who were of opinion that the circumstance of the receipt of interest would not control the previous express repudiation of the company as debtors.

The case of the *Family Endowment Society** (January 12, 1870), was an application for winding up a society, constituted under a special Act of Parliament in the year 1836, by which (as usual in such Acts) the Society was not incorporated, but provisions were made to enable it to sue and be sued by representative proprietors. A deed of settlement was executed, containing provision for dissolving the Society, if need were. In 1849, the Society granted an annuity policy to the petitioner, the liability under which was in terms limited to the subscribed capital of the Society.

In 1861, the directors of the Society entered into an agreement with an Assurance Company for transferring the Society's business to it. The proprietors dissolved the Society, in accordance with the provisions of the deed, and ceased to carry on business. The petitioner received his annuity from the transferee company until 1869, when that

* Law Rep., 5 Ch. App., 118.

company was ordered to be wound up, and he thereupon applied for an order to wind up the Family Endowment Society as an unregistered company, under Part VIII. of the Companies Act of 1862.

It was contended, by proprietors in the Society, that his receiving the annuity from the transferee company was sufficient to establish a novation of the debt; but to this it was replied that the transferee company had acted merely as agents to the Society in the payment of the annuities, and that the petitioner had not relinquished his claim on the original contractors.

Lord Hatherley and Lord Justice Giffard affirmed the decision of Vice-Chancellor James, making the order to wind up, holding that the Society (although "dissolved" in 1861), had not been extinguished, and was within the Companies Act of 1862, and that the petitioner was still a creditor of it. No contract with the transferee company had been entered into by him, no remedy against it had been acquired by him, and no knowledge of the terms of the transfer could be imputed to him.

"It would much shake public confidence in dealing with Assurance Companies, and would, therefore, be greatly to the detriment of such companies, no less than to that of their customers, if the court were to hold that a person, having the security of the assets of one company, should be deemed to have discharged these assets, and to have accepted the liability of another company, merely because the second company, possessing the assets of the first, pays to the creditor his growing annuity on the footing of his grant."

In the case of the *National Provincial Life Assurance Society** (January 28, 1870), this authority was followed as far as regarded an annuitant petitioner. Another petition, however, had been presented by the holder of a policy on life. The business of the original company had been transferred twice over. It was a registered company, under the

* Law Rep., 9 Eq., 306.

Joint Stock Companies' Act of 1844, established in 1851; its business was transferred to the Bank of London Insurance Association in 1856, and with the business of that Association, to the Albert Life Assurance Company in 1858.

After each transfer, the petitioner paid his premiums to the transferee societies, and finally sent in his claim to the Albert Company; it was admitted by them, but before the time fixed for payment that Company was ordered to be wound up. It was contended on his behalf that his payment of premiums was the same thing in principle as the receipt of an annuity; but it was urged for the Society that he ought, if he desired to enforce his contract against the Society, to have satisfied himself before paying them, that the transferee companies were acting as the Society's agents, which was not the case, and that he must seek his remedy against the company to which he had paid the premiums. Vice-Chancellor Malins adopted the latter view—"If the petitioner did not acquiesce in the transfer, it was his duty to say so. There was a novation of contract." The learned judge offered, however, every facility for appeal, if desired.

Another case, having relation to a policy on life, is that of *Ex parte Blood** (29 Jan., 1870). The policy-holder had paid a premium to the transferee company, and obtained an endorsement on the policy by them, accepting the risk under it. Both companies were in course of winding up. It was contended for him that the endorsement did not release the liability of the original company but gave him the additional guarantee of the transferee company. Vice-Chancellor Malins did not accept this view. Remarking—"I do not wonder that Mr. Blood makes every attempt to make these parties liable to him; I should very much rejoice to see it done:"—he decided that in this case also there had been novation, and that a mere guarantee by the transferee company never entered the mind of the applicant.

* Law Rep., 9 Eq., 316.

In re the Merchant's and Tradesman's Assurance Society (Feb. 28, 1870, Law Rep., 9 Eq., 694), was a case of a mutual society, that is, one having no shareholders' capital, but in which the policy-holders reciprocally insure each other, registered under the Joint Stock Companies' Act of 1844.* The deed of settlement provided for the calculation of profits, the sale of the business, and the dissolution of the Society, which was carried into effect in 1858, when the liabilities were transferred to the Bank of London Association. It was sought to wind up the Society under Part VIII. of the Companies' Act of 1862.

Vice-Chancellor James refused the order. The meeting of the Society to transfer its business in 1858 bound all its members. "If there ever was a case of novation (supposing that there originally was a creditor and debtor, which there would not be here), this seems to be the most complete novation that can possibly be conceived."

In re Manchester and London Life Assurance (March 14, 1870; Law Rep., 9 Eq., 643), arose on the transfer in 1862 of its business and assets to the Western Life Assurance Society, the business of which was itself transferred to the Albert Company, in 1865. Vice-Chancellor James granted the order to wind up. The only evidence of notice to the policy-holder was in the form of receipt given him for his premiums. "It is true he went on paying to the Albert, at the place where he was told in the ordinary course of business he ought to pay it. It appears to me monstrous that a person having a contract of this kind is to be told that he has lost his right under the original contract, and must take such remedy as he may get from some other office, because he pays his premiums and takes receipts at the place where he is told to do so." Vice-Chancellor James held that he was not bound by the decision of Vice-Chancellor Malins in the *National Provincial* case, just quoted, to abstain from giving effect to his own opinion.

* Not 1845 as stated in the Report.

In re the Times Life Assurance and Guarantee Company (March 19, 1870. Law Rep. 5 Ch. App., 381), was a case of a company registered (not "incorporated" as stated in the report) under the Joint Stock Companies Act of 1844, with power in its deed to dissolve and wind up. In 1857, the business was transferred and the Company dissolved. Circulars were issued to the policy-holders offering to indorse their policies with the guarantee of the transferee company. The policy in question was not endorsed, but the holder in 1863 accepted a "bonus" upon it, and gave a receipt to the transferee company. Vice-Chancellor James, upon this, refused the order to wind up. The policy-holder was bound by the provisions of the deed of settlement; he had full notice of the transfer; he accepted the position of being a policy-holder of the transferee company.

Upon appeal to Lord Justice Giffard, this decision was confirmed.

The result of these several decisions may be briefly summed up as follows. A "mutual" society may bind all its members by a transfer carried into effect pursuant to the deed of settlement. A "proprietary" company, whose policies contain the usual clause, incorporating the provisions of the deed of settlement, may bind all policy-holders who, having clear and sufficient notice of the transfer, act in such a manner that their assent to it may be presumed; but the mere payment of premiums or receipt of an annuity from the transferee company does not raise a sufficient presumption of assent. According to the head-note in the *Family Endowment* case "although slight evidence is sufficient in the case of ordinary firms to show that a creditor who continues his dealings with incoming partners accepts the new firm as his debtors instead of the old firm, yet strict proof will be required before it is held that a creditor of a company, under a special contract, has accepted the liability of another company with which the first is amalgamated."

Without presuming for one moment to dispute a decision, arrived at with so much care by authorities so high, it may not be improper to remark that the point is an altogether new one; and that it does not appear unreasonable to have expected that, in the case of a public company, whose dealings are matters of notoriety, and are constantly being advertised and discussed, slighter evidence of notice and of assent would have been deemed necessary than in the case of a private firm. It may well be that where A, B, and C being partners, A retires and D comes in, possibly without any change in the style of the partnership, the new partners carrying on the same business in the same way, a discharge of the old firm ought not to be presumed against a creditor; but where a public company openly declares its intention of ceasing to do business, closes its doors, and directs its creditors to go elsewhere for payment, is it not a strange story for the creditor to urge that he did so meekly for a long series of years in ignorance that anything had been going on in which he was concerned?

It is evident that these decisions run in confluence with a current of feeling in the minds of the learned judges who delivered them, that there is a certain hardship in a man being handed over from one company to another without his consent. It may be so; though, in the absence of fraud—assuming equal solvency on the part of both companies, and a proper consideration to have been paid for the risks assumed—it is difficult to see wherein the hardship consists. Is it not a greater hardship that a shareholder, in any of these companies, has undergone, in being chained for so many years to a dead body of liability—from which nothing he could do could release him—the extent of which he could never ascertain?

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Without presuming for one moment to dispute a decision, arrived at with so much care by authorities so high, it may not be improper to remark that the point is an altogether new one; and that it does not appear unreasonable to have expected that, in the case of a public company, whose dealings are matters of notoriety, and are constantly being advertised and discussed, slighter evidence of notice and of assent would have been deemed necessary than in the case of a private firm. It may well be that where A, B, and C being partners, A retires and D comes in, possibly without any change in the style of the partnership, the new partners carrying on the same business in the same way, a discharge of the old firm ought not to be presumed against a creditor; but where a public company openly declares its intention of ceasing to do business, closes its doors, and directs its creditors to go elsewhere for payment, is it not a strange story for the creditor to urge that he did so meekly for a long series of years in ignorance that anything had been going on in which he was concerned?

It is evident that these decisions run in confluence with a current of feeling in the minds of the learned judges who delivered them, that there is a certain hardship in a man being handed over from one company to another without his consent. It may be so; though, in the absence of fraud—assuming equal solvency on the part of both companies, and a proper consideration to have been paid for the risks assumed—it is difficult to see wherein the hardship consists. Is it not a greater hardship that a shareholder, in any of these companies, has undergone, in being chained for so many years to a dead body of liability—from which nothing he could do could release him—the extent of which he could never ascertain?

There is no contract between an Assurance Company and its policyholders, either that the company will continue to carry on business, or that its individual members will con-

In re the Times Life Assurance and Guarantee Company (March 19, 1870. Law Rep. 5 Ch. App., 381), was a case of a company registered (not "incorporated" as stated in the report) under the Joint Stock Companies Act of 1844, with power in its deed to dissolve and wind up. In 1857, the business was transferred and the Company dissolved. Circulars were issued to the policy-holders offering to indorse their policies with the guarantee of the transferee company. The policy in question was not endorsed, but the holder in 1863 accepted a "bonus" upon it, and gave a receipt to the transferee company. Vice-Chancellor James, upon this, refused the order to wind up. The policy-holder was bound by the provisions of the deed of settlement; he had full notice of the transfer; he accepted the position of being a policy-holder of the transferee company.

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There is no contract between an Assurance Company and its policyholders, either that the company will continue to carry on business, or that its individual members will con-

tinue to be responsible under the policies.* Every individual member has the right to transfer his shares without the consent of the policy-holder, and (by the operation of the Companies' Act) becomes discharged from all claim at the end of one year from the transfer. In cases where the policy incorporates the clauses of the deed of settlement, and they provide a method of transfer of the whole liabilities, it is difficult to see any distinction in principle between such a transfer, when duly made, and the transfer of the shares of a single shareholder.

No case of the kind has yet been determined with regard to a society possessing no legal organisation whatever, such as those established before 1844, without a special Act or Royal Charter, but it is presumed that, in any such case, no question of "novation" could arise. The contract is made with the trustees of the deed of settlement, and all they have to do is to show that they have complied with the provisions of the deed. The contract remains the same, and the transfer, if made, requires neither "discharge" nor "adoption," the consent to both being made part of the contract itself.

As a result of these decisions, it becomes indispensably necessary that all persons, who were shareholders in any Assurance Company at the time of the transfer of its business to any other company, should take steps to ascertain the extent of their liability, and to obtain a release from it. It seems to us intolerable that, where the shareholders of a company have paid over to persons appearing competent to undertake the risk, the properly-ascertained value of the liability under it, and possess no control over the future management of the transferee company, it should be within the power of policy-holders to sleep upon their rights and their wrongs for any number of years, and only to awake to the fact that something has been done by which they were not bound when the transferee company is insolvent.

* See *Waterloo Assurance Company*, 1864, 33 Beav., 542.

If a release must be obtained from every creditor, it should be obtained forthwith.

In cases where the transferring company has been regularly wound up in pursuance of the Companies' Acts, or the earlier winding up Acts, the contributories have obtained a sufficient release. Where that has not been done, it may be necessary to resuscitate the dormant companies, for the purpose either of effecting a transfer, pursuant to their deeds, of the shares of the members individually, or of entering into voluntary liquidation. Whatever be the means adopted, something should be done in all these cases to put an end to the suspended liability, or to force the creditors to an election. With regard to all future cases of transfer of business, the effect of recent Statutes gives them legislative sanction, and will probably prevent any such questions arising.

By the Companies' Act, 1862, s. 161, any company in voluntary liquidation may accept shares or policies of another company for distribution among its members, or may enter into other arrangements, which will be binding on all its members, unless varied by the court within one year. As far as regards the issue of policies to members, only a Mutual Assurance Society could bind its policy-holders; but, as forming part of a winding up, a proceeding under this section would force the creditors to an election. By s. 162, provision is made for the purchase of the interests of members who dissent. These provisions are now superseded, as far as regards Life Assurance Companies, by the Life Assurance Companies' Act, 1870 (33 & 34 Vict. c. 61). Section 14 provided that the directors of any company under that Act desiring to transfer its business to another may apply to the court for its sanction, which shall not be given where policy-holders representing one-tenth of the amount assured dissent; and no transfer is to take place to which the sanction of the court is not given. By s. 15, copies of all documents relating to the transfer are to be deposited with the Board of Trade.

The Joint Stock Companies' Arrangement Act, 1870 (33 & 34 Vict. c. 104), enables the court (in a winding up) to sanction and make binding on all creditors, or all of any class of creditors, a compromise agreed to by a majority in number, representing three-fourths in value.

ART. IX.—HABITUAL DRUNKENNESS.

By A. HERBERT SAFFORD.

THOUGH habitual drunkenness is a vice which is becoming less frequent, the statement that there some 60,000 habitual drunkards in the United Kingdom was certainly a full and sufficient justification for the production of Dr. Dalrymple's Bill of last session. The medical press had with one voice called for such a measure, and the success of similar legislation in America certainly might have led the promoters of the Habitual Drunkards' Bill to expect a fair and patient consideration. We at once admit that some serious objections to the Bill may exist, but we think that the principle, the erection of asylums for inebriates, is worthy of trial. We cannot therefore assent to the suggestion recently made by the *Times*, that the gentlemen who have advocated this measure, comprising as they do earnest and practical thinkers, eminent medical men, and others who have an accurate knowledge of the amount of misery and crime arising from this offence, may be classed among, in the choice language of the leading daily newspaper, "incurable fools, incurable knaves, incurable scribblers, and incurable talkers." It is to be observed that these names have been hurled at the advocates of the Bill, without any discussions of its objects. The *Times*, having no arguments, and irritated by its loss of position as an oracle, has simply resorted to scolding, in terms of which even a low class criminal attorney

would probably have been ashamed. We think the Bill at the least merits discussion, and shall therefore proceed to consider the principal provisions of Dr. Dalrymple's scheme, the work of a similar plan in New York, and the necessity for the establishment of sanitariums in this country. We believe we shall prove, not only that the detention of drunkards, until they have obtained an opportunity of reformation, is the most merciful course, but also that at the present time persons repeatedly convicted of this offence are liable under existing laws to imprisonment for a lengthened term, equal to that proposed for their detention at an asylum for inebriates.

In the Bill before us an habitual drunkard is defined as a person who has rendered himself, by excessive and frequent use of intoxicating drinks, incapable of self-control, or who is dangerous to himself or others, and it is declared he shall be deemed to be of unsound mind. An habitual drunkard may be confined in a licensed reformatory while under the influence of such unsoundness of mind, and for a sufficient length of time afterwards as may be necessary for the protection and more complete restoration of his mind and health. An habitual drunkard may, at his own request, be received into a reformatory, or may be admitted upon the request of a near relation or friend, upon production of certificates signed by two medical practitioners, and upon the affidavit of some credible witness that the drunkard is incapable of managing his affairs, or dangerous. A Justice of the Peace or a Commissioner in Lunacy may order the drunkard to be discharged upon proof that the disorder has been cured. The time of confinement is, however, limited to not less than three months, and not more than twelve. This is an epitome of the first portion of the proposed Act, and in this part is no doubt the greatest difficulty. As Mr. Bruce, the Home Secretary, while expressing sympathy with the object of the Bill, said, "the law does not even compulsorily lay hold of lunatics until they are violent or criminal," and the public at large are not pre-

pared to accept the statement that a person who renders himself incapable of self-control, or dangerous, should be deemed as of unsound mind. Drunkenness has no doubt been defined as a state in which a person is overwhelmed or overpowered with drink, so that his reason is disordered; but if we once permit the drunkard to be dealt with as a lunatic, how can we enforce the maxim of our criminal law that he who is guilty of any crime through his own voluntary drunkenness shall be punished for it as if he had been sober? However much we may pity the drunkard, we cannot forget that the making himself drunk, in a person whom drunkenness excites to do harm to others, is a crime against others.

The greater portion of the second part of this Bill will, we believe, be received with general approbation, and we much regret that it has been encumbered with the preceding clauses. The magistrates of any county or borough may establish a sanitarium to which they may commit—(1) Persons proved by medical and other testimony to be habitual drunkards, and incapable of managing their own affairs, or dangerous; (2.) Persons who have been convicted of drunkenness three times within six calendar months. The offenders may be detained for not more than twelve months, but can be discharged on proof of their restoration to mind and health. Some of the principal objections to the Bill have thus been stated in the *Pall Mall Gazette*—

“In considering the provisions of the measure which has been introduced under the name of the Habitual Drunkards’ Act, the first feature which is apparent would be the necessarily enormous increase of the so-called sanitariums, refuges, *maisons de santé*, which would really be only private asylums in disguise. There are even now a considerable number of retreats or sanitariums established for the reception of persons of intemperate habits, as is evident from a very cursory perusal of the advertisement sheets of the medical journals. These places are kept by medical men for the avowed and perfectly legitimate object of profit, and at present they contain only voluntary inmates. How would it be if they were filled

with men and women whose aberrations were rather those of moral than of mental affliction, but who would in all essential particulars be treated as lunatics? What security should we have that the worst abuses of the private asylum system would not be not only in full force, but multiplied fourfold from the circumstance that they would bear on persons actually sane in intellect though faulty in their moral habits? The scheme of allowing per centage for example is one which it can be proved is quite commonly practised. A medical man who owns or superintends an asylum signs the certificate which places an alleged lunatic under the care of another doctor similarly occupied, and receives from the latter a commission of 20 or 25 per cent. on the profits arising from the patient, and the compliment is returned in kind when occasion offers. It can hardly be questioned that this is an inducement of the most direct kind to make these proprietors anxious and active in assisting to stock each other's folds."

No doubt these are difficulties, but they can be met by stringent legislation. We are not, however, interested in defending the provisions of the Bill as regards voluntary patients, or patients sent by friends to the sanitariums; we should be well satisfied to see these omitted in the future measure; but we are anxious to see some more merciful and less primitive means than the stocks used for the reformation of those drunkards who offend against public decency. There are thousands who are now being constantly convicted by the magistrates, whom it would be far more economical to detain in a sanitarium, than to inflict upon the country and the police the annoyance, trouble, and expense of repeated apprehensions and commitments. Several cases in point occur to our mind, but we will take that of a girl who began a course of habitual drunkenness at the early age of seventeen. She herself expresses her anxiety to reform, but the periods to which the magistrates are empowered to sentence her are not sufficiently long to break the vile habit, and are just long enough to restore her to liberty, with an increased desire for that which has been her ruin—drunk. The following is a

list of her offences and punishment during a little more than six months in the present year.

February 11, Drunk and incapable, Discharged; February 23, Drunk and disorderly, 7 days; March 11, Drunk and incapable, Discharged; March 15, Drunk and disorderly, 7 days; April 6, Drunk and disorderly, 15s., or 10 days; April 16, Drunk and disorderly, 7 days; May 6, Drunk and disorderly, 40s., or 1 month; June 28, Drunk and disorderly, 5s., or 7 days; June 30, Drunk and disorderly, 7 days; July 7, Drunk and disorderly, 40s., or 1 month; August 6, Drunk and incapable, 5s.; August 26, Drunk and disorderly, 40s., or 1 month.

It will be seen that this unfortunate woman has served three whole months' imprisonment, and nearly six weeks in shorter terms, that is to say, for those offences for which she has been punished, leaving entirely out of consideration those times when, although drunk, she was sufficiently fortunate to elude the police. Yet, although she has suffered so long an imprisonment, she might under existing laws have been sentenced to longer periods for mere drunkenness, unaccompanied by disorderly conduct. The 21st Jac. I. c. 7, s. 3, enacts that any Justice of the Peace—

“Shall from henceforth have power and authority, upon his own view, confession of the party, or proof of one witness upon oath before him, which he by virtue of this Act shall have power to administer, to convict any person of the offence of drunkenness, whereby such person so convicted shall incur the forfeiture of five shillings for every such offence, and the same to be levied, or the offender otherwise punished, as in the said Statute is appointed; and for the second offence he shall become *bound to good behaviour* as if he had been convicted in open sessions; anything in said former Statute made in the fourth year of his majesty's reign to the contrary notwithstanding.”*

Now, the requiring this woman to find sureties would

* Recently at the Richmond Petty Sessions, a man was charged with being drunk and incapable, and as there were previous convictions against him, he was bound over, himself in £20 and two sureties in £10 each, to be of good behaviour for six months. Committed in default.

simply mean her commitment to gaol for a long period; she would not receive proper medical treatment, and the expense of her detention in prison would be equal to that in a sanatorium. Mr. Bruce urged, as an objection to legislation on the subject, that—

“The great safeguard against drunkenness was the growing opinion, that it is a disgraceful habit; but this proposal, instead of taking hold of the young man when some good could be done, only dealt with those on whom the habit had become almost, if not quite, inveterate.”

No doubt a better education among the working classes, the establishment of decent refreshment houses, or working men's clubs, where the man in work can treat his less successful friend to a meal, instead of a pint of beer, will do much to promote sobriety. In fact, we believe that a very large proportion of drunkenness may be traced to the misplaced generosity and courtesy of friends. Many labourers would deem it an insult to offer an unemployed fellow-workman a loaf of bread, and, therefore, beer is their only method of expressing an active sympathy. The majority of men charged with drunkenness at the London police courts are out of work, and attribute their inebriation to this cause. Still, though we hope that, as the disgrace of drunkenness has been gradually admitted among the gentry, who, some years since, were quite as great sinners in this matter as the working classes are now, the same feeling will, with the promotion of decency in their dwellings, and a higher moral tone, extend to the handicraftsmen. Yet we cannot, in the face of the successful experiments in America, consign 60,000 of our fellow citizens to the doom of irreclaimable drunkards—madness and death!

Having in the course of this article repeatedly mentioned the reformatory work which has been done, and is still progressing, in the United States, we think it will not be impertinent to our subject to give a sketch, however im-

perfect, of the working of these sanatoriums. One, the New York State Inebriate Asylum has been established at Binghampton, 1867; another, the Washingtonian Home at Boston, 1867; a third at Media, Philadelphia; and a fourth at Chicago; while in the British province of Nova Scotia great exertions are being made to procure a similar asylum. To the American asylums, by an Act passed in March, 1865—

“Any justice of the Supreme Court, or the county judge of the county in which any inebriate may reside, shall have power to commit such inebriate to the New York State Inebriate Asylum, upon the production and filing of an affidavit or affidavits by two respectable *practising* physicians, and two respectable citizens, freeholders of such county, to the effect that such inebriate is lost to self-control, unable from such inebriation to attend to business, or is thereby dangerous to remain at large; but such commitment shall be only until the examination now provided by law shall have been held, and in no case for a longer period than one year.”

The following may be taken as an illustration of the treatment. A clergyman, for more than two years before entering the Binghampton asylum, drank a quart of brandy daily, and felt sure that he would die if he should suddenly cease. He entered the office at 11 a.m., after having drank twelve glasses of brandy, and intended to return to his hotel to enjoy a last, quiet debauch, but Dr. Day (the superintendent) quietly objected to his return, sent for his trunk, and cut off his brandy at once and totally. For forty-eight hours there was incessant craving for his accustomed stimulant, and he could only obtain sleep by the assistance of bromide of potassium, but on the third day the craving ceased, and he *never felt* it again. Other patients have stated that they suffered a morbid craving for the first two or three weeks; but all agreed that the sudden discontinuance of the stimulant gave them less inconvenience than they had anticipated. Complete recovery is, of course, a slow and long effort of nature, but the improvement in the health, feelings, and

appearance of patients after only a month's residence upon that briery hill is very remarkable. The success of the treatment at this asylum is most satisfactory. In the year 1866, 349 cases were admitted, of whom there returned for the second time 34, for the third time 18, for the fourth time 6, and for the fifth time 2. There are now doing well, and apparently reformed, 215, while 65 are greatly improved, and 9 are incurable, and unfit to be at large. The average number of days which each patient remained was only 27.

Dr. Day states :—

“Since my connection with the Home (about nine years) there have been registered as admitted to its care the names of 2300 patients. Of this number 410 have suffered from the various forms of mania known under the general name of delirium tremens. Twenty-seven inmates of the Home have died during this time, a large proportion of those deaths being caused by consumption, pneumonia, and other diseases, aggravated by intemperance. Of course it is impossible to estimate with any degree of accuracy the proportion of this number who have been completely reformed. Many are dead and hundreds are scattered all over the country, or have passed from under my observation, but it is safe to say that a majority have remained firm to their determination formed while with us, while a much larger proportion have had their condition alleviated, with hopes of eventual and permanent cure.”

It is evident from the above statement that in a very large proportion of cases the patients have been cured, or are in a fair way of recovery. As a matter of economy, surely such a system is worth a trial, when the average detention is only equal to that for which a prisoner for drunken and riotous conduct might be sentenced. Great stress has, however, in some quarters been made upon the suggestion that the eminent political economist, Mr. John Stuart Mill, is opposed to punishment for drunkenness. True it is that in his essay on Liberty he writes :—

“Drunkenness, for example, in ordinary cases, is not a fit subject for legislative interference, but I should deem it perfectly legitimate

that a person who had once been convicted of any act of violence to others, under the influence of drink, should be placed under *special legal restriction*, personal to himself, and that if he were afterwards found drunk, he should be liable to a penalty, and that if when in that state he committed another offence, the punishment to which he would be liable for that other offence should be increased in severity."

But he also admits that:—

"Whenever, in short, there is a definite risk of damage, either to an individual or to the public, the case is taken out of the province of liberty, and placed in that of morality or law."

We think these quotations will prove that Mr. Mill is not in favour of non-interference with the habitual drunkard. The objections often offered, that habitual drunkenness cannot be defined, and that a power to restrain drunkards might be abused for evil ends, have thus been disposed of in the *Lancet*: —

"We think these objections might be met by making drunkenness in the first place, and then habitual drunkenness, offences of which the criminal law should take prompt cognizance—at present intoxication is regarded by the administrators of the law as a venial error, and is punished, if at all, by the infliction of a trifling fine. Now, if it were enacted that any second summary conviction for drunkenness before a magistrate should be followed by a short term of imprisonment with hard labour, and if the police were instructed to prosecute offenders, a great step would at once be gained. The fact of drunkenness would be branded as criminal and disgraceful in a way which has never yet been done, and the punishment would have a powerful deterrent effect upon many. It would then be perfectly possible to provide that, after a certain number of summary convictions, the offender should be tried before a jury for habitual drunkenness, and sentenced, if found guilty, to a period of detention in a special reformatory. Such proceedings would afford complete protection against improper imprisonment, and we believe that public opinion is, or will soon become, fully ripe for them."

To these suggestions we give our cordial concurrence. We are not among those who advocate the prohibition of the sale of liquors. The failure of such laws in Connecticut, Massachusetts, and New Hampshire, should be a sufficient warning to the advocates of similar measures in this country. People will not stop selling, buying, and drinking intoxicating liquors because the Legislature says they must not. On the other hand, we will not subscribe to the doctrine of the *Times*, that because there have been, and are, therefore there must be, a large number of habitual drunkards. The fatalist cry of Kismet to all propositions for ameliorating the social condition of the working classes by the repression of some of the evils which more especially attack them will not be ours. We see daily homes, happy families, ruined and made miserable from drink. We hear of men who have enjoyed the highest reputation accused of, or yielding to, crimes with which they never would have been charged, but from this unhappy propensity to habitual drunkenness. The statement of the leading daily paper, that "there are not a few who would willingly get drunk every Sunday and Monday if they could be assured of being sent to an asylum and reformed during the week," seems to us an insult to the common-sense of the English public. In spite of sneers at philanthropists, and wholesale abuse, without argument, we believe that the day is not far distant when the Habitual Drunkards' Bill will, with some amendments, become law. Even while we are writing comes before us a disgraceful account of the habitual drunkenness of "respectable" married women at Birmingham, whose gross antics were hailed by a crowd of English men and women not with shame and contempt, but with delight. If the punishment of drunkards by this Bill had no further effect than to educate the minds of the lower orders in a feeling of horror for this most fearful vice, the labours of Dr. Dalrymple and the medical profession will be amply rewarded.

ART. X.—THE LATE PROFESSOR VON
VANGEROW.

THE students of Roman jurisprudence in Great Britain and the United States of America will learn with deep and unfeigned regret of the demise of Professor Adolf Carl von Vangerow, of the University of Heidelberg. Within the last few years the old Ruprecht University has suffered irreparable losses in the removal by death of Mittermaier, Rothe, and Von Vangerow. Not only were these professors great scholars, but they were preëminently gentle and good men. As a criminal lawyer, upon whom Professor Feuerbach, of Bavaria, cast his mantle, no man has, perhaps, ever obtained to so high a position as Mittermaier. His countenance was stamped with benignity, and his life furnishes an example of what a man should aim at who is desirous of being a true patriot and a friend of the human race. Rothe was a model theologian. His quiet calmness, his unaffected piety, and his beaming countenance, transfused almost with celestial ardour, when delivering certain parts of his lectures on the "*Leben Jesu*," can never be forgotten by those who have been his pupils, and enjoyed his friendship. But Von Vangerow was a strong man; strong in frame and muscle, and one can scarcely believe that he has passed away years before attaining the allotted span of human life. As one looks at the accumulated memoranda obtained at his lectures, and remembers that his allotted two hours daily for lectures on the Pandects were sometimes extended to upwards of three, one cannot but feel that the life of the great man has been shortened through the waste occasioned by the enormous physical energy consumed in his inimitable addresses.

The successful German professor is a despot, but his despotism is of the divine type, for he sways his sceptre in the domain of intellect by the force of his inflexible purpose, and his superior mental power. As one has often quietly walked

by the side of Von Vangerow, in the old Plöckstrasse in Heidelberg, receiving his friendly, kindly greeting, one easily realized that he was a strong man in every sense, but no one would have guessed from his appearance that such hidden fires of eloquence lay smouldering beneath that quiet and repose. But it was so, for Von Vangerow was a man of a lion-like nature, and all his movements were like the tramp of a Titan. Mittermaier was, in his lectures, colloquial, fragmentary, suggestive, lacking system and completion; Rothe was chaste, finished, and exquisite; but Von Vangerow had a power of utterance and of eloquence, with a voice like the tone of a trumpet and the melody of a harp, that no other professor we have ever heard possessed. This is no exaggeration, as those who have known the lamented German will admit. There is a marked distinction between a German professor, of the first rank, and many public teachers in our own country. The German, impressed by his theme, and dominated by his subject, gives you the result of his craft in a finished and carefully planned piece of workmanship. The very "chips from the workshop" of such a man are valuable. The Englishman too often forgets that he is an investigator; he speaks as if he knew everything, and as though it were an act of condescension to treat upon the subject he has in hand. Such men could never occupy the first rank in a German University. The *genius loci* requires something different, and the professor can only hope to obtain success when he is natural in his manner, and when he is himself so interested in his subject as to command the lively interest of others.

But to return to Von Vangerow. He was born in the South of Germany, at Schiffelbach, a village in Kurhessen, not far from Marburg. In the beautiful country where Luther met and contended with Zuinglius, he spent his youthful days. The current conviction with his Heidelberg students used to be that he was not particularly industrious in his early life; and it was even hinted that he was once

plucked. However this may have been, it is certain that from his sixteenth year, now nearly half a century, he has devoted his noble energies to the study of jurisprudence. On January 23, 1830, he was advanced to the degree of Doctor of the Civil and the Canon Law, and the following Easter he commenced his professional career as Privat-docent in the University of Marburg. It is not a little remarkable that Savigny, Puchta, and Von Vangerow, were at different times associated with the Hessian University of Marburg. Savigny commenced his student life there in 1795, and took his Doctor's degree in the same legal school on October 31, 1800. Puchta was a professor at Marburg in 1837, and Von Vangerow was for ten years identified with this seat of learning, as student, tutor, and professor. He was appointed Professor extra-ordinarius at Marburg in the year 1833; in 1837 he was appointed in the same University, Ordinary Professor, that is, one of the principal Professors of the Law. Upon the death of the distinguished Professor Thibaut, in the autumn of 1840, just thirty years ago, Von Vangerow was invited to the University of Heidelberg, where he remained, till his lamented death, the most popular Professor of the Roman Law in Germany.

In Germany it is usual to mark distinguished literary and scientific ability by Court favour. Thus, two years after Von Vangerow's settlement at Heidelberg he was appointed a Court Councillor in the Grand Duchy of Baden; in 1846 he was made a Privy Court Councillor; and in 1849 he became a "*Geheimrath*" or Privy Councillor in the same State. He was a knight of both German and Russian orders.

No man's writings could possibly give less idea of his flowing and rich eloquence in his class than those of Von Vangerow. In this country a man writes a lecture, polishes it, and touches it up, not for the benefit of his class, for they may doze or scribble while he is delivering it, but because he has the publication of a book in view. It is quite different in Germany. There is no compulsion to attend

lectures, no register of attendance is kept, and hence the student's life is the freest period of a young man's course. The student may wander about with his dogs, or he may spend his time by bawling songs from his "*Commerz Buch*" in his club, or fighting duels on the far side of the Neckar. If he is to be won and rivetted to his class it must be by the power and eloquence of the professor. It is a remarkable fact that with all this freedom men sometimes "*hospitiren*" to learn what is going on in other classes, but they rarely forsake their own favourite professors. The secret of a German professor's popularity is not merely to be traced to his great stores of learning, but to the unfettered use he learns to make of his voice.

Goethe himself, a prince among writers, has said—"To write is to abuse speech, and perusal is but a sad substitute for the living energy of language." But Von Vangerow himself shall be heard upon this point, as it will explain his own marvellous success. He has said:—

"I hold it to be an essential requirement of lectures on the modern Roman law that the verbal discussions of the lecturer should not only comprehend in a fragmentary manner the general distinct parts of the law, but should present for the contemplation of the auditors the entire system as an organic whole. Of course, I here presume a free and characteristic delivery, one in which the professor is, at the time of his lecture, really self-active. Lectures that are dictated or read ought, in common justice, never to be given, for they are only destructive to the intellect of the professor, tending to convert his avocation into actual misery, whilst they lack the penetrative vitality which give to a spoken lecture its real value."

Such men as Savigny, Puchta, and Von Vangerow, would never have obtained their world-wide reputation if they had confined themselves to the *ipsissima verba* of their MSS. The ready utterance, the keen, quick eye, kindly glancing at the student and ascertaining at once whether the statement was understood; the courteous demeanour and sympathy of these great men, all brought to a focus, powerfully ministered to the advancement of their students, and to their own well-deserved

European fame. Powerful and fascinating as were the addresses of Von Vangerow, he was a true and faithful disciple of the school of Savigny. Not only did he talk of the original sources of the law, but he constantly led his students to refresh and stimulate their research at the fountain head. The great revival in the study of jurisprudence that the present century has witnessed in Germany, has been the result of the careful and loyal study of the sources of the law, contained in the "*Corpus Juris Civilis*" and the other writings of the jurists and scholars of antiquity.

Von Vangerow's inaugural address, delivered at Marburg in 1830, consisted of a commentary on l. 22 Cod. "*De jure deliberandi*" (6·30). This address was succeeded by the following works:—A treatise upon the "*Latini Juniani*," Marburg, 1833; "*De Furto Concepto ex Lege XII. Tabularum*," Heidelberg, 1845; his great work entitled "*Leitfaden für Pandektenvorlesungen*,"—elementary work for lectures on the modern civil law—was first published at Marburg in three volumes, in 1837, and the following years. This work has passed through several editions; the seventh was published only last year. Almost his last work was a monogram on the difficult questions connected with the *Senatus Consultum Neronianum*. Von Vangerow has also written in Richter's "*Jahrbuch*" several critical works, and in the "*Archives for Civil Practice*," of which he has been co-editor since 1841, a great number of articles have appeared from his pen.

In contrasting the three great civilians of Germany of modern times, it may be observed that Puchta was a compact and philosophical writer, who, if he had lived at the time of the early Roman jurists, when the luminaries of legal science were grouped in two constellations of surpassing brightness, would have been found marshalled with the Proculians, the sect or school that treated the law with philosophical freedom, deriving its arguments from the appropriateness and the utility of the law itself. Arndts, for-

merly of Vienna, is preëminently a plain, able, and practical writer. But Von Vangerow possessed a critical acumen that amounted to genius. His arguments are so striking and cogent, he is so fair to his opponents, combining the clear common sense of the best English controversialists with the learning and acuteness of a German.

The Pandekten of our great master is a work upon the modern Roman law altogether unique. To the general student it would be regarded as lacking the completeness and finish of Puchta. To the advanced student, Von Vangerow presents, in his extracts from the authorities and his discussions on the controverted points of the law, a mine of wealth and treasure, not to be found in any modern treatise on the Roman law. In his three volumes, containing almost as many thousand pages, we possess the most acute discussions on the controversies of the Roman law, found in either ancient or modern writers. These volumes, however, give no adequate conception, to a mere reader, of his well rounded and perfectly spoken lectures. His works resemble a vast workshop stored with materials, and containing things in various stages of completeness. Their great value can be only appreciated by those who have used them as text-books for his spoken lectures. During the winter session of the University of Heidelberg, for five months of the year, hundreds of students flocked to his class. They came from all parts of Germany, from France, Holland, Belgium, England, Italy, Spain, Greece, Russia, and the United States of America. Full and systematic, microscopically correct and accurate in his authorities and his definitions, his students never wearied of listening to him, and even grew enthusiastic in their devotedness to the professor, and to the branch of the law of which he was so great a master. In his lectures there seemed to be revived the fluency, the beauty and promptness of the great Roman jurist, Ulpianus.

One of the best informed of our daily journals recently printed the following able, truthful, and pertinent remarks on the great jurist.

"While French journalists have been circulating fictitious stories about the mysterious death of an illustrious German officer, one of the most noteworthy among German professors has suddenly passed away. By the death, in his sixty-second year, of Professor Vangerow, at Heidelberg, Germany loses one of her greatest jurists, and the students of Roman law one of their most accomplished teachers. Since Savigny died, Professor Vangerow has had no superior in the world as an authority upon Roman law. For the last twenty years his lectures have attracted students to Heidelberg from all parts of the globe. In his class-room, students from every State in Germany, from England, Scotland, and America, attentively listened to the exposition of the principles of Roman law, and to an explanation of the points which had been the subjects of controversy and doubt. There was not a pamphlet relating to the law which the professor had not read, and to which, in his work entitled 'Pandecten,' he did not make some reference. He had the gift, possessed by few of his countrymen, of being exhaustive without being exhausting. His lucidity of exposition was as great as his learning. This contributed to make him renowned as a teacher. Indeed his fame as a writer is out of proportion to his capacity. Had he devoted himself, like Savigny, to the production of some comprehensive work on Roman law he would doubtless have made a greater mark in the voluminous literature of which Roman jurisprudence is the theme. He might have done this, however, without rendering a more important service to the students of jurisprudence. Those who profited by his teaching will be able to accomplish that which he had not the time to undertake."

We hope and believe that the closing words of this writer may be verified in the future.

Many years ago Mr. Chittenden, of the American Bar, was sitting by the side of the writer of this sketch at the close of Von Vangerow's course of lectures on the Pandects. All the class were in a state of exhaustion; but it was felt to be exhaustion after a mighty victory. Never will the plaudits with which those lectures were concluded be forgotten. Mr. Chittenden retired with the writer, to the building now known as the "Hotel de Russe," and whilst the present writer was penning an article on Lord Palmerston for the *American*

Press, Mr. Chittenden wrote on a piece of paper, still preserved, the following account of that closing lecture. "Dr. Von Vangerow was deeply affected, for his students had faithfully clung to him till his last utterance. His face was flushed and his glorious voice trembled with feeling. When he closed, thunders of applause testified the admiration of his students, and many a tear was brushed away from manly cheeks. 'Gentlemen,' said Von Vangerow, 'we have attained our object, and I have now only a pleasant duty to perform. Though during the long months that have fled, I have given your patience a severe trial, I still hope that the recollection of the labour my instructions have cost you, will not cast too deep a shade upon the lectures themselves. You will, I know, remember that the labour has been mutual. I am confident that the investigations of the past session have demonstrated to you, that the study of the Pandects is, and will be, the only sure basis of a scientific knowledge of the law. I am quite sure that your further researches in jurisprudence will be facilitated by the attention you have paid to this subject. One who knew well has said, and said correctly, "*bonus pandectista, bonus jurista*," and the experience of every age confirms the assertion. I trust you will regard the notes of my lectures, which you will carry away with you, as a friendly souvenir of the past session. But my time fails; I thank you heartily for your kind and studious attention. It is a guarantee to me that you have acquired a correct idea of the full significance of the principles and doctrines advanced. I shall not, however, blame you,' he pleasantly observed, 'if you rejoice somewhat at the thought, that—instead of listening to the voice that has so long resounded in this lecture hall,—you are about to enjoy a pleasant *ferien* in the homes of your friends. Farewell.'" Several have been the communications since that "Farewell," which have come from the kind-hearted and noble professor on the banks of the Neckar to the old student on the banks of the Thames. On the 18th of October last, a letter came with the

Baden impress. It told his former pupil and friend that the excellent professor, Dr. Von Vangerow was dead, and that on the previous Friday he had been laid in his last resting-place—his “quiet bed,” as the Germans call it, not far from Umbreit, and Mittermaier, and Rothe, and that a distinguished professor from Munich had been already invited to occupy his chair.

ART. XI.—THE LEGAL EDUCATION ASSOCIATION.

ON the 6th of July last, just before the beginning of the long vacation, a movement was formally organised in Lincoln's Inn Hall, which promises to effect a complete revolution in the study of jurisprudence in England. Surrounded by a large number of lawyers, representing both branches of the profession, supported by the law officers of the Crown, and by leading men of all shades of opinion in politics, Sir Roundell Palmer, the most eminent and most respected member of the English Bar, proposed a resolution constituting the Legal Education Association, of which he was subsequently made president. This resolution, which was seconded by the Solicitor-General, supported by leading attorneys, and put to the meeting by the Attorney-General, was unanimously carried. It sanctioned what had already been done by the promoters of the Association, who, beginning as a small committee of provincial solicitors, had, by their patient and unremitting exertions, gradually made the profession and the public supporters of their scheme; and it adopted the short and simple statement of the objects they had placed at the head of their circular.

Although every leading daily and weekly paper, and almost every leading periodical, has expressed unqualified approval

of those objects, it has naturally happened that the writers of some of the longer articles in dealing with the subject of legal education have discussed other questions which affect the practice and the status of the profession. It is due to the Association to remind our readers that it has carefully limited its functions to the work of creating a proper system of legal education. "Its views," as Sir Roundell Palmer said in his address, "were carefully guarded so far as pledging themselves to these two objects only, namely, first 'the establishment of a Law University for the education of students intended for the profession of the law,' and secondly, 'the placing of the admission to both branches of the profession on the basis of a combined test of collegiate education and examination by a public board of examiners.'" Whether the present strict line of demarcation which separates the practice of one from the practice of the other branch of the profession should be retained, and, if not, whether it should be removed altogether or only partially, are questions which have nothing to do with an organisation intended to give both branches a better kind of education; except so far as that better education will enable both branches to discuss all questions affecting their common profession in a broader and more intelligent spirit. The business of providing effective machinery for teaching the science of law and testing the results of such teaching, stands before everything in "the process of law reform." The establishment of an efficient law school would, as the circular of the Association very properly observes, "be the best preparation for a reform of the law itself." For all the defects in our positive law, the unsystematic creation of new rules, both judicial and legislative, the useless and bewildering treatises which crowd our bookshelves, the empirical practice of our courts, which justifies Mr. Justice Hannen's severe comparison of the successful lawyer with the skilful "bone-setter," are entirely due to the shameful neglect with which the science of jurisprudence has been treated in this country. Those, therefore, who have at heart

the highest interests of the profession, will most worthily serve it by helping to place it in its proper position as a science. The best methods of applying it as an art may be safely left to be adjusted by the common sense of the public and the profession.

The prominent and important position which the Association has now reached has only been attained after more than two years of incessant, though comparatively private, effort. At every step they took, the Committee were met by difficulties of all kinds, some of which, as we shall presently see, are still to be dealt with. Up to the time of the meeting, at which the Association was formally constituted, their scheme was discredited by absurd rumours, that the whole profession was to be revolutionised, that the two branches were to be amalgamated, that the Hon. Societies of the Inns of Court were to be abolished, and their property confiscated, and so on. These rumours were effectually silenced by Sir Roundell Palmer's able and convincing address. There was to be no revolution, professional or otherwise; they proposed no fusion of the two branches. "That institution (the future law school or University) was not to deal with anything but legal education, add the tests to be provided, so far as they contemplated anything, contemplated the existence of distinctions between the two branches of the profession." So far from proposing the abolition of the Hon. Societies of the Inns of Court, the Association "did not presume to dictate to the Inns of Court in any way whatever with respect to their internal organisation or government. If they were to have a legal University, he (Sir R. Palmer) would like to see his own College (Lincoln's Inn) incorporated with it as one of its Colleges; but that was for the Inns of Court themselves to determine."

One of the most significant and gratifying circumstances attending the movement has been the general and cordial support which has been given to it by the leading men belonging to, or in any way connected with, the profession. For

the first time, we believe, in the history of any agitation for legal reform, a large number of the judges have not only expressed approval of this scheme, but have authorised the public announcement of their approval in the circular of the Association, whilst others, without authorising their names to be published, have expressed opinions in favour of the movement. Eminent ex-judges have written to say that the proposed scheme has their hearty well wishes. The Attorney- and Solicitor-General have joined the Council of the Association, amongst the members of which will be found most of our leading barristers, side by side with members of the chief firms of solicitors in London and all the principal provincial towns. Then, again, in still more curious juxtaposition with the professional lawyers, we find the Universities of Oxford, Cambridge, and London, represented by men of eminence as jurists and teachers; Oxford, by its Regius Professor of Civil Law, Dr. Bryce; its Corpus Professor of Jurisprudence, Dr. Maine; its Chichele Professor of International Law, Dr. Bernard; and its Vinerian Reader of Law, Mr. Kenelm Digby; Cambridge, by its Regius Professor of Court Law, Dr. Abdy; London University, by the Professor of Jurisprudence at University College, Dr. Amos.

The explanation of this is to be found in the fact that the Committee have dealt with the subject of legal education in no narrow, professional, or local spirit. They have felt that they can only accomplish the object they have before them—that, namely, of rescuing the science of law from the degradation into which it has fallen—by extending the facilities for its study in every direction. Acting in this broad and catholic spirit, they have boldly and successfully defied the bigoted exclusiveness which would keep the education of the solicitor jealously apart from that of the barrister, and have persuaded leading men in both branches to combine for the purpose of obtaining so far as practicable a common education. How far such a common education is practicable is a matter of detail, which will have to be worked

out further on. Enough for the present that a common purpose has united both branches in a sensible and cordial alliance.

Moreover, the promoters of the movement have wisely declined to be controlled by any merely local influences or traditions. It is true they have assumed that London will be the educational centre of the new system, that there must be a metropolitan school of law, with its staff of teachers and board of examiners. But this, as Mr. Grant Duff long since pointed out, is a local necessity. The Universities can never, under the most favourable circumstances, do more for the ordinary student intended for the pursuit of a profession, than train him for the acquisition of special professional knowledge. "What the Universities have mainly done—what I found the University did for me," said Carlyle, himself the most distinguished student of the University, whose students he was addressing, "was that it taught me to read in various languages and various sciences, and for the rest, in regard to all your studies here" (at Edinburgh), "and whatever you may learn, you must remember that the object is not particular knowledge that you are going to get higher in technical perfection, and that sort of thing."* The final and special professional school must be where the professional practice goes on, and where the professional training may be best had. Whatever changes may be effected in the direction of localising our procedure, the most important legal work of the country will always come to London. There also the ability and experience of both branches of the profession will always be mainly found; for there the higher professional prizes must always be sought. It would be idle therefore to talk of creating the new educational machinery anywhere else than in London. At the same time the promoters of the movement have made it clearly understood, that every encouragement will be afforded to the study of jurisprudence in its purely scientific aspect, not only at the older Univer-

* Address as Lord Rector to the students of Edinburgh University.

sities, but wherever opportunities for promoting the study offer. Hence it is that the professors and readers whose names we have given have joined the council of the Association, and expressed their intention of giving it their assistance, without, of course, committing themselves to any details. The relations which the Association has already succeeded in establishing with the Societies, hitherto more or less representing both branches of the profession, make us hope that one of the most difficult and delicate parts of its task, that of obtaining the co-operation of existing vested interests, is almost accomplished. The course which it has taken, has been at the same time decided and conciliatory. In its preliminary statement no doubt was left as to the scope of its action;—the establishment of a law University or school in London, a complete and thorough system of legal education, and a satisfactory method for testing the results of such education. In plain language the Inns of Court and the Incorporated Law Society were informed that neither could supply this want. But, anxious to use the words of its president, “to do nothing and say nothing which might in any way whatever throw difficulties in the way of those who could help them in forwarding the cause,” the Committee, both in its printed statement and its private communications with all of the Societies, earnestly drew attention to the fact that they might afford invaluable help by taking part in the organization which would be required. In this way it has appealed directly and impressively to the good sense and right feeling of the Benchers, and the appeal has been answered in a way which has taken a large section of the profession and the outside public by surprise. Before the long vacation the Middle Temple, “in a manner quite worthy of the zeal which it has at all times exhibited in the cause of Legal Education, had responded most generously, and had not only appointed a committee to communicate with the Council of the Association and with the committees of the other Inns of Court, but had *recorded its approval of the views of the Association.*

Gray's Inn had not gone quite so far, though it had substantially done the same thing. It had appointed a committee with power to communicate with their Council and with the committees of the other Inns of Court, with a view to the promotion of the same object. Lincoln's Inn had not thought it expedient at present to go so far, but he" (Sir Roundell Palmer) "hoped and believed that it was only because they desired to move gradually, and to see their way before going further." * Indeed, as the speaker whom we have just quoted observed, "the fact that they were met there that day to organize the Association and appoint its council might, if other reasons were wanting, justify their hesitation, and their resolve to wait for a future day before communicating with them."

Though a majority of the members of its council have formed the Council of the Association, the Incorporated Law Society have not up to this time signified in their corporate capacity their formal decision to co-operate with the Association, but stated in their reply to the invitation of the Association that "they considered they ought not, as representing so large a proportion of the practising attorneys and solicitors, to express their approval of the objects of the Association, without ascertaining as far as practicable the views and opinions of the profession." Since this resolution was passed, nearly four months have elapsed. We trust that when the Association enters upon the second and most important part of its mission, it will find this Society, which has so faithfully discharged its duty as the pioneer of Legal Education, accepting, on behalf of the other branch of the profession, a new position and larger duties, and that it will become part of the new organization. It is right to add that the Metropolitan and Provincial Law Association and the leading provincial law societies have passed resolutions, declaring the objects of the Association "worthy of all who take an interest in the welfare of the profession."

* Address of Sir R. Palmer, in Lincoln's Inn Hall.

As we have already observed, the most difficult and delicate part of the work which the Association has taken in hand still remains to be done. It is much to have obtained a general and hearty recognition of the soundness of the principle on which the movement is based. But to embody that principle in a harmonious and efficient organization will task the patience, the tact, and the energy of the Executive Committee of the Council to which the duty has been entrusted. The manner in which this Committee has been selected shows clearly that one of the most formidable of their difficulties, that, namely, of making the scheme meet the views and needs of all the interests involved in it, has been realised and provided for. The Inns of Court, the Incorporated Law Society, the Universities, are all represented by men who best know what is wanted in their respective directions, and where they can and ought to make concessions. In the hope that we may afford them some slight assistance in their arduous labours, we venture to make the following suggestions with respect to the future work of the Association.

In the first place, proposals for narrowing the scope of the scheme will be made on all sides by obstructive, or timid, or crotchety advisers. These proposals must be rejected without hesitation. If the promoters of the present agitation have judged rightly in the matter, the time has come for a comprehensive reform, and the public mind is prepared for it. To ask, therefore, for some petty instalment, some piece of tentative machinery, or some clumsy adaptation of existing machinery would be sheer folly. Any such makeshift would be sure to prove unworkable, would discredit the movement, and postpone all real reform indefinitely. Then, again, the Committee must be prepared for endless minute objections to the details of their scheme, whatever shape it may ultimately take. As an illustration of what we mean we will take the observations of Sir George Young, in the paper read by him before the Juridical Society in May last. The tone of

that paper reflects the highest credit upon the writer. He approves without any reserve of the general objects which the Association aims at achieving—the improvement, namely, of the official provisions for imparting legal instruction, and the substitution of an examination for the present system under which access is had to the profession. He welcomes the idea of concentrating the educational provisions for both branches of the profession into one school of law. Comparing the scheme of the Association with that proposed by the Royal Commission of 1854, he even goes so far as to say, that “altogether the difference between them may be said to amount to this, that this scheme will work whilst that of the Commission will not.” But though Sir George Young is quite free from the narrow prejudices which have hitherto obstructed all reform, he is not free from a certain academic narrowness, which prevents him from dealing with a practical question in a broad, practical, common-sense way. The term “university” attached to the proposed educational organization, jars upon his too critical and sensitive ear. It is no doubt, strictly speaking, an obvious misnomer, and not the less so, because, as Sir George Young tells us, Sir Edward Coke so described the Inns of Court in a rhetorical flourish, or because the Commission of 1854 tried by an equivocal confusion to defend the use of the word on etymological grounds. But the use of the word in this instance can do no harm, for it can lead to no misconception. No father who articles his son, or enters him at one of the Inns, would ever be misled by it into the notion that the “Law University of London” was going to give the youth a general as well as a professional education. “There is something attractive,” as Sir George Young naïvely admits, in the name of a University, and we doubt whether the inaccuracy of the term would strike many even of the Cambridge fellows. It certainly did not occur to Mr. Lowe—no mean authority on academical education—for we find him speaking of the Inns of Court as “a University in a state of decay.”

The objection urged by the same writer to the giving of the professional degrees of Associate and Bachelor of Laws has more practical force, though, as regards the degree of Bachelor of Laws, he quite misunderstands the value of what he calls a "real" as compared with a professional degree. If the new system of legal education and examination is thoroughly carried out, a degree in law granted to the student for the Bar would necessarily represent some special professional knowledge, over and above the very moderate general education of the passman, and over and above any theoretical knowledge of jurisprudence acquired from the University law teachers. We are disposed, however, to agree with Sir George Young in thinking that the distinction implied in these degrees would not be worth the machinery required for conferring them as mere pass degrees. But it should be borne in mind that of late years the profession of an attorney has undergone a marked change, both in its character and position. The interests dealt with have greatly increased in complexity and importance, and it has become quite clear that no man can be an efficient general practitioner in law—an adviser upon whom clients can rely—unless he has received, not only a general education quite equal to that received by the candidate for a Master's degree at either Oxford or Cambridge, but a special knowledge of the principles of law, which neither of those Universities can, on their own admission, afford. This fact, coupled with the fact that the average professional income of attorneys is far higher than that of barristers, has naturally attracted the educated good sense of the country, and many of the younger members of this branch are graduates of Oxford, Cambridge, or London. But, whilst in London and our larger provincial towns there is plenty of business of a character which requires men of considerable education to do it properly, there is, throughout the country, a kind of practice which can be done by inferior men—men who can only enter the profession at all through a very moderate

pass examination. It is, we think, scarcely fair that every one who becomes an attorney should be confined to this low test of fitness; and it has been urged on their behalf, that if they concur in a common and comprehensive scheme of education, those students who, after presenting themselves for the higher examination which would qualify them for a call to the Bar, decide to become attorneys, should carry into their practice as attorneys some mark of their having passed this higher examination.

But all these points are merely matters of detail, and are given merely as instances of the criticisms which must be expected. It is when Sir George Young comes to deal with the method of organization that he shows how possible it is for able and earnest men to imperil the very reform which they advocate, through inability to look at a question except from one stand-point. Starting with the proposition that "the needs of candidates tend to call into existence the teaching which they require," he seriously proposes that the Association shall confine itself in the first instance to creating this demand for good teachers by creating a proper examining body; and he adopts as a model the Civil Service Commission. "Get an efficient body," he says, "to set the examinations," and the good teachers will answer to the demand for good teaching, which will be immediately created. But what would the Incorporated Law Society—what would the Inns of Court say, to a proposal for superseding them and their functions by a board of a similar character to the Civil Service Commission? We do not hesitate to say that these bodies would withdraw at once from all co-operation with the Association if it confined itself to such an attempt, and that the public, regarding the Association as a failure, would see it collapse without a single protest.

Here we have a striking instance of a proposal for piecemeal or tentative reform, which should not be entertained for a moment. Even if the ground were clear, we think that such a puny attempt to create a great educational machinery

would fail signally. It is quite true that the Inns of Court are not Colleges, and probably can never be converted into Colleges. It is quite true that, in the strict sense of the word, no school of law in London can afford collegiate education. It is quite true that the ordinary articled clerk of to-day, set to work in the office at seventeen, and only spending one year of his time in London, has not the same advantages of general education as the graduate who leaves the University at twenty-two to enter at the Temple ; that the special professional teaching which suits the one will therefore fall short of that required by the other, and that the examination must be adjusted in each case to different standards. But if this teaching is to be afforded, and these examinations are to be held in London, if both branches of the profession are to unite for this purpose, if public opinion is to be brought to bear effectually on the whole question in Parliament and elsewhere, and existing organizations are to be pressed into the service, the Association must not listen to any suggestions for any curtailment of their scheme. That section of the governing body in each Inn which regards all change as an evil will, when they find some change inevitable, propose to compound for the minimum of change. They will offer to appoint an additional reader, or to cancel that rule recognising a year's reading, or rather attendance in chambers, as a sufficient qualification for a call, with which they paralysed the attempt made in 1852 to create something like a school of law. To all such proposals we hope the Association will reply by stating that their duty is to provide a thorough system of legal education and examination, and, by applying to the Crown for a charter, incorporating a University or School of Law.

The suggested heads of this charter have already been issued for consideration, and though, when it comes to be drawn up, modification will no doubt be found necessary, we believe that it substantially embodies the real

requirements of the profession. It proposes to vest the Government in a senate, which is to be constituted as follows. The Lord Chancellor, the Chief Justice, and the Attorney and Solicitor-General, are to be *ex-officio* members. The Crown is to have the power of appointing a certain number of nominees, who will no doubt be men of eminence. A similar power of nominating members is to be given to each of the three Universities of Oxford, Cambridge, and London, so that the schools of law in each may be properly represented, and help, as well as share, in the reorganization of legal education. A certain number of members are to be elected by the benchers and a certain number by the barristers of each Inn. The Incorporated Law Society, the Metropolitan and Provincial Law Society, and Provincial Incorporated Law Societies, are also to appoint a certain number of nominees. In this way every vested interest affected by the proposed charter will be represented in the governing body. Of course, a senate thus elected is open to the objection that it is too mixed and too large a body to be efficient. No doubt it would be better, if it were practicable, that it were composed exclusively of efficient working men. But in order to create such a body, all the conditions must be disregarded which must be observed by the promoters, if this movement is to succeed, while, on the other hand, it will be possible by judicious arrangement to render this apparently unwieldy body thoroughly efficient.

The Association is about to lay the foundation of a national law school, which will not only meet professional need, but afford to the general public opportunities for the study of jurisprudence. That these foundations should have long ago been laid by the Inns of Court is clear; but it was as judicious as it was in good taste, to offer them an opportunity of associating themselves with the movement. For, though the Association carefully disclaims the intention of in any way dealing with the funds of these Societies, and proposes to meet its expenses by students' fees alone, its

scope and usefulness would of course be largely increased if it were assisted by the large endowments of these Societies. It is notorious that the benchers of each Inn are divided into two parties, one opposing all change, the other—which is daily growing in numbers and influence—strongly in favour of applying their funds to educational purposes. As soon, then, as the Inns of Court accept the invitation of the Association, as we hope and believe they will, the obstructive party will not be able to resist much longer the combined influence of the progressive party within their respective bodies, and the outside pressure of professional and public opinion. We may, therefore, reasonably expect that when the scheme of the Association has been matured and accepted by the profession and the country, the conciliatory course it has adopted with respect to these vested interests will bring about the restoration of a great endowment to its legitimate object. That the Incorporated Law Society should be asked to become part of an organization which absorbs, in order to enlarge, the functions they have so well performed, is an act of simple justice. And it is only fair that, if the other branch of the profession is to be associated with the movement, its members, both in London and the provinces, should be properly represented. At the same time, it must be admitted that a purely professional governing body could not be expected to deal with the subject of legal education in a way which would completely meet existing wants. Though mutual concessions would probably reconcile any differences arising from the distinction between the two branches, a certain narrowness of tone would inevitably be displayed by a senate composed exclusively of barristers and attorneys. We are glad therefore to find that this evil has been met by the introduction of an important lay and academic element into the constitution of the governing body. The Crown, in making its appointments will, no doubt, select laymen of distinction wherever they can be found, and the representatives of the Univer-

sities will be men whose culture and experience as teachers will correct any tendency to make the school a mere school for practitioners. The Association has shown its wise determination to associate the law teaching of the Universities with its own, by providing in the suggested heads, that "every person who has obtained a degree in arts at any of the Universities of the United Kingdom shall be exempted from the necessity for passing any preliminary examination, and by giving the Senate power to relieve any person, who has satisfactorily passed an examination in law at any such University, from the necessity of passing the intermediate examination, and to shorten his course of study in London."

Although the Association expressly states in its circular that it is not pledged to any details, it will be clear to our readers that the sketch it has drawn up has been the result of much careful consideration. We think that it contains the outline of a scheme which, with some modification, will fulfil the purpose for which the Association has been formed. Without attempting to destroy any existing institution, it proposes to bring together and unite, forces already in operation, in a harmonious and consistent organisation. That it may prosper in its mission must be the wish of every Englishman who thinks that the study and the practice of our law should not remain a reproach amongst civilised nations. For, to quote the words of their circular, "it is only by means of the establishment of some such Law College or University as is here proposed, and the succession of teachers and writers which it would ensure, that we can hope to see arise in this country a School of Jurisprudence, worthy to be placed side by side with the great schools of France and Germany."

DIGEST OF SCOTCH DECISIONS ON GENERAL POINTS OF LAW.

No. 1. 25 Nov., 1868.—*Murray v. Eglinton Iron Company*.—
41 *Jurist*, 93.

LEASE—REPARATION.

A LEASE by the proprietor of a mansion house, whereby a mineral tenant was entitled to sink a pit in a field, and to have access to the field from the road to the mansion house. *Held* the tenant had use of the road only so far as not inconsistent with its use as the approach to the mansion house, and, therefore, iron rails ordered to be removed, and damages found due; but no damage allowed for injury to house or garden from smoke and vapour. Per Lord President (Inglis)—“I cannot imagine that it was in the contemplation of parties that the tenants were to have the exclusive use of the road, leaving the lessor without an approach to the house.”

No. 2. 27 Nov., 1868.—*Hamilton v. Emslee*—41 *Jurist*, 98.

AGENT'S LIABILITY.

A CREDITOR was found liable in damages for an illegal because an excessive pouncing (distrain) of his debtor's effects. The excess was intended to cover the landlord's preferable claim for rent. The creditor thereon brought an action of relief against his agent, who was assoilzied. Per Lord Deas—“A law agent accepting employment does not guarantee that the advice which he gives, or the opinion he expresses, to his client shall turn out to be sound or correct. As things stand, it is no doubt necessary for a client to take care whom he consults, and it is not an unwholesome result that caution should be necessary in that matter. On considerations of that kind the law, I apprehend, is quite fixed, that in giving his advice in ordinary circumstances, the law agent sufficiently discharges his duty if he gives that advice according to the best of his judgment, subject to this qualification only, that if his opinion and advice be so grossly erroneous as to be altogether inexcusable in any man pretending to be capable of exercising the profession, he shall be held liable for the result.” Lord Kinloch (the Ordinary) had held the agent liable.

No. 3. 2 Dec., 1868.—*McNiven v. Charlton*—41 *Jurist*,
104.

PARTNERSHIP.

A PARTNERSHIP and a lease of the company's premises terminated

at same time. *Held*, that one of the partners could not renew the lease in his own name without communicating with his partner, who was entitled to participate in the subsequent profits. Per Justice Clerk (Patton). "It appears to me perfectly plain that a partner, and especially a managing partner, who goes to the landlord, and, behind the back of his partner, obtains a new lease of the partnership premises, is not entitled to retain the profits of that lease for himself. It follows, as the natural result of the plainest principles of equity applied to such a case, that a partner so acting must communicate the benefit of the lease so obtained to the co-partner, the interests of which he was bound to have attended to. The effect of refusing the remedy would be that a valuable interest in the co-partnery—that of good will—would be destroyed, and a private benefit secured by an act grossly wrong in itself."

No. 4. 9th Dec., 1868.—*Watson v. Wilson*.—41 *Jurist*, 124.

OBLIGATION—REAL BURDEN.

A DISPOSITION was granted of part of an estate binding the disponent to a certain style of building, and which obligation the disponent bound himself to insert in all the dispositions of other portions of the same estate. The disponent built according to the plan, and now applied to prevent the disponent disposing of other portions of the estate without imposing the same burden on the disponents. *Held*, the disponent had right to enforce the obligation. Per Lord Neaves—"If an owner in making a feuing arrangement, inserts in his conveyances a clause like this, the object of which is to secure the respectability of the neighbourhood, he is clearly bound by it. The feuar must be held to have accepted the conveyance and built his house on the faith of the superior's obligation, and he has therefore a *jus quasitum* in the condition, and is entitled to say that the superior shall not violate it. It is conceivable, however, that cases may arise in which the enforcement of his right by the feuar might be ruinous and oppressive, as not being calculated to protect any legitimate interest on his part, and where accordingly this Court, under its equitable powers, might be induced to relax or modify the superior's obligation. For example, it may, at some time or other, be most expedient for all concerned that a church, or other public edifice, should be erected on some part of this considerable estate, or that some part of the ground should be permanently left vacant."

No. 5. 5 Jan., 1869.—*Clark v. Clark*.—41 *Jurist*, 198,

BILL—BANKRUPTCY.

A BANKRUPT obtained his discharge on a composition under the Sequestration Statute. His brother ranked on a bill and concurred in the discharge. Afterwards the bankrupt, of his own will, granted his brother a bill for the original debt. The acceptor disputed its validity as granted without value and as a preference. The Court, on the authority of the law as laid down by Lord Mansfield,

in *Hawks v. Saunders* (1 Cowp. 290), held the bill good. Per Lord Benholme—"In one sense it is true that the debt had been extinguished by the bankrupt's discharge; for it then ceased to be legally exigible. And there still remained, after the discharge, a moral obligation incumbent on the suspender, and that obligation will be recognised by law if it has been recognised and acted on by the debtor in it."

No. 6. 12 Jan., 1869.—*Drummond v. Winter*.—41 *Jurist*, 203.

LEASE—ACCIDENTAL FIRE.

A LANDLORD let a shop for five years; but in consequence of an accidental fire, the tenant could not get possession until a fortnight after the term. *Held*, that the tenant was entitled to abandon the lease. The authority referred to was 3 July, 1815, *Walker v. Bayne*, House of Lords, 3 Dow, 233.

No. 7. 14 Jan., 1869.—*Paul and Thain v. Royal Bank of Scotland*.—41 *Jurist*, 209.

BANKER—RETENTION.

Held, that bankers were not entitled to retain cash deposited on open account to meet a current bill discounted by them, no special agreement being alleged, or statement that the customer was *vergeus ad inopiam*. Per Lord Ormisdale—"It is established as a general rule that in ordinary circumstances, such as occur in the present case, a party is not entitled to withhold payment of a debt presently due by him in security of an acknowledged debt that possibly may become due to him at some future time. I am of opinion that the bank had at the date no right to retain the balance due by them in the deposit account, or to refuse payment of the cheque for that balance."

No. 8. 19 Jan., 1869.—*Strickland & Co. v. Nalson and McIntosh*.—41 *Jurist*, 215.

CHARTER-PARTY—RE-EXCHANGE.

A VESSEL was chartered by the plaintiffs from the defenders to proceed to two foreign ports. At the first port the crew mutinied and were discharged. The captain agreed with the agents for the charterers to deviate from the charter-party, and the latter agreed to advance money to send on the passengers and cargo to the second port. The captain drew bills on the owners for the advances as "necessary disbursements." The owners refused to honour the bills, and an action being brought thereon—*Held*, 1st, that the deviation from the charter-party not being necessary for the safety of the ship, was *ultra vires* of the captain, and the expenses, therefore, not recoverable; and, 2nd, that the owners were not liable for re-exchange, the captain having exceeded his authority in granting bills. Per Lord Barcaple—"It is well settled law that, except in special cases, the captain

alone has power to act for the owners as to the disposal of the ship, and that in order to authorise him to deviate from the voyage agreed on in the charter-party, there must be a case of necessity. A prospect of advantage will not justify such a proceeding. There must be an over-ruling necessity, arising either from it being impossible to carry out the original voyage, or from the certainty of great loss accruing to the owners in the event of the voyage being persisted in." "The claim of re-exchange is an unusual one in our Courts, and I know of no case in which effect has been given to it in our Courts. At the same time it is a well-known claim among merchants, which is recognised by the Courts in England, and to which we must give effect where it properly arises. It admittedly arises at the instance of an indorsee against an indorsor upon a bill being dishonoured. It has been decided, however, that there is no claim of this kind against acceptors on refusal to accept—for this reason, that supposing the drawees declined to accept without good ground, the claim of the payees against *them* could only be for the amount of the bills which they were bound to accept and pay and legal interest, any claim for re-exchange being against the drawers, who alone guaranteed that the bills would be honoured."

No. 9. 20 Jan., 1869.—*Cameron v. Morrison*—41 *Jurist*, 223.

BILL—WHEN ISSUED.

A BILL was sent by two acceptors to the drawer with the sum in figures at the upper corner—the words, "four months after date"—the names and addresses of the acceptors and their signatures. The drawer filled up the remainder of the bill and dated it. Summary diligence was sought to be suspended because issued without a date. The Court repelled the objection, and *held* the bill was not issued until filled up by the drawer. Per Lord President (Ingليس)—"What is the issuing of a bill? It appears to me that it cannot take place before the bill has become a competent obligation; in other words, before it has become a bill and been issued as such." Per Lord Deas (dis.)—"The view I take of the matter is, that a bill is issued in the sense of the enactment when it passes, as this bill did, out of the hands of the obligor into the hands of the obligee—out of the hands of the debtor into the hands of the creditor, so that the grantor has no longer any power over it. At that time, undoubtedly, this bill was blank in the date."

No. 10. 22 Jan., 1869.—*City of Glasgow Union Railway Company v. Hunter*—41 *Jurist*, 229.

RAILWAY COMPENSATION.

A JURY awarded compensation for value of property taken, and for damage to remaining property by noise, &c. The Company sought to set aside the verdict as contrary to the Statute on several grounds, as to the mode the jury computed value. The Court assailed.

Per Lord President (Inglis)—“In my opinion it makes no difference whether the injury to be ascertained arises directly from the execution of works on the portion of land taken, or less directly from the execution of the works on land taken from a neighbour.” “I entirely agree with Lord Wulbury that the words ‘injuriously affecting,’ in this and other similar Statutes, do not mean ‘wrongfully’ or ‘unlawfully,’ but are used in a popular sense as meaning deterioration in value. We are not entitled to meddle with the verdict of the jury unless they have done something plainly illegal. It may be quite clear that the jury have not taken the best way of getting at the value of this property. But I cannot say that what they did was incompetent or illegal.”

No. 11. 26 Jan., 1869.—*Paterson v. Taylor*.—41 *Jurist*, 223.

PROPERTY BOUNDARY.

A PARTY obtained a conveyance of a piece of ground bounded by the central line of a proposed street, measuring forty feet in width. *Held* the proprietor was entitled to build up to that line. Per Lord President (Inglis)—“The question is whether there is a contract to leave space for a street of forty feet width between the respective properties.” “To constitute such an obligation, where the right of property extends to the centre of the space proposed for a street, there must be an express stipulation in the titles.”

No. 12. 26 Jan., 1869.—*McKenzie v. City of Glasgow Union Railway Company*.—41 *Jurist*, 233.

PROPERTY—SURRENDER.

THE proprietors on one side of a street were all taken bound to leave “a lane or passage of ten feet in breadth along the back of their properties.” *Held* that one of their number was not entitled to erect an arch over the lane, to connect his property with another he had acquired on the opposite side. Per Lord Justice Clerk (Patton)—“The law of servitude is inapplicable, the right being of the nature of a common interest in the lane; and if we look to what was the intention of the parties, I cannot but think that an open lane or narrow street, and not an arched passage, was intended. I may observe also that if one proprietor was entitled to arch over his portion, every proprietor would have the same right. The result would be that this lane would present a series of arches and open spaces, which would very much affect the use and enjoyment of the privilege intended to be secured.”

H. B.

Notices of New Books.

[* * It should be understood that Notices of New Works forwarded to us for Review, and which appear in this part of the Magazine, do not preclude our recurring to them at greater length, and in more elaborate form, in a subsequent Number, when their character and importance require it.]

Systems of Land Tenure in various Countries. A Series of Essays published under the sanction of the Cobden Club. Second Edition. London: Macmillan & Co. 1870.

THIS work appeared very opportunely—at the very time when legislators, publicists, and literary men were all turning their thoughts to the extraordinary position of the Irish Land Question; and when the Government was making up its mind to settle that great question for one generation at least. If there was a subject on which the British public was, two years since, specially ignorant, it was that very land question. The apparent paradox involved in the statement that the laws affecting the land in England and Ireland being alike, the systems arising out of those laws were, and must continue, essentially different, was bewildering. Much light was thrown upon a dark topic by Mr. Gladstone's speech on the introduction of his great measure. It remained that the various land systems of Europe should be presented, for examination and comparison, in the present volume, which may be described as a series of essays which, while containing much legal and much statistical information, deal rather with the sociological and political aspects of the subject.

As the case of Ireland was, at the beginning of the present year, present to all men's thoughts, it was natural that the essay upon Ireland, by Dr. Longfield, should head the list. The "Nationalist" writers will gain little aid to their cause from this acute observer. He points out that the agricultural wealth of Ireland is rapidly increasing; that absenteeism is far less injurious than it was a century since, and is, in fact, diminishing; that homicide and outrage exist because they are natural or indigenous habits, and not because of agrarian, and, therefore, of removable, inciting causes. The Ulster Tenant Right (to which the new Act imparts all the force of law) is "not capable of being exactly defined," and it "is not without its disadvantages." In reference to the "improvements" which have been said by many to be attributable to the industry and outlay of the tenantry, Dr. Longfield states that only a small fraction of the present value of the land is to be attributed to these alleged improvements by tenants. Unquestionably few persons living have enjoyed better opportunities of becoming acquainted with the details of this vexed

question. It may, therefore, be concluded that Parliamentary orators, like Mr. Maguire and Sir J. Gray, who made out, or endeavoured to make out, a very different case while engaged in discussing the Land Act, were, in fact, highly colouring their case, while urging excessive demands for far more than they were ever likely to get. The difficulty of gaining accurate intelligence on the simplest questions of fact in Ireland, is well illustrated by these conflicting statements as to tenants' improvements. "Fixity of tenure," so vigorously demanded by the advocates of the tenant party, is shown to be utterly opposed to reason and justice, in one of the most forcible and logical divisions of Dr. Longfield's essay; and a watchword so discredited can hardly now be revived with any effect for years to come, and will never be revived with hope of success until the powerful land-owning element in the Legislature shall have been eliminated.

One passage of Dr. Longfield's elaborate paper appears open to exception in a remarkable degree. It will be remembered that under special Acts of Parliament the incumbered estates were sold off, and conveyed to purchasers. One of the commissioners for doing this was Dr. Longfield, who must have executed some thousands of "Parliamentary" conveyances, all of which by virtue of the Act cleared the land conveyed from all estates, interests, claims, and demands whatever—excepting those specified. The purchaser had, therefore, the strongest guarantee which it is in the power of the Legislature to give, against all pre-existing rights. And yet we are told that there would be no injustice in a recognition and allowance of claims for improvements made antecedently. Suppose a horse sold under process by the sheriff, and made over to the highest bidder, who pays the full value, and fancies that he becomes absolutely the owner of an unincumbered steed. Would he tolerate any pecuniary claim on the part of some ostler or farrier who had "improved" the animal long prior to the day of its judicial sale? Equally unjust is a claim for "improvements" put forward against a purchaser with "Parliamentary title," who was, in fact, induced to buy by the ostensibly final and conclusive nature of the transaction. That so monstrous a proposition should be so supported is strange indeed. For "reasons of State" the golden sovereign might be declared to be worth fifteen shillings, or the penny postage stamp might be rendered value for three farthings. But the last person in the world to recommend such a proceeding ought to be in the one case the ex-master of the Mint who had issued, or in the other, the ex-secretary of the Post Office who had sold, to the public the depreciated commodity. If a contract must as a method of pacification be repudiated, the official who on the part of the public signed that contract comes forward with a bad grace to justify the repudiation.

The essay on the landed system of England, by Mr. Wren Hoskyns, is too brief, yet long enough to show the author's acute perception of the causes which render land the luxury of the few, rather than the heritage of the many. If he could persuade the English nation to take a genuine interest in a question which must

affect the future stability of the kingdom, and if he could induce the legal profession to co-operate in the preparation and successful working-out of a good system of registering titles, and thereby of facilitating the acquisition and transfer of land, he would be a public benefactor. Mr. Campbell contributes to the volume a careful sketch of the complicated land system of India. M. de Laveleye, in describing the systems prevalent in Belgium and Holland, enters, as we think judiciously, more minutely into statistical statement than the other essayists. When, however, he estimates the mortgages existing in England at 58 per cent. of the value of the land, he manifestly adopts some very crude statement which it would be utterly impossible to verify. There is no discernible method of arriving at the percentage of incumbrance. If mere guesswork were allowable, M. de Laveleye's guess might be pronounced to be three times too high. There are, as we are informed, statistics in Ireland tending to show that the incumbrances on land, instead of 58, do not amount to 18 per cent. of the value. It appears that in Belgium the tenants hold, for the most part, under leases too short to admit of full justice being done to the soil; and that transfers of land are burdened with an enormous duty of more than 6 per cent. of the value. Notwithstanding these drawbacks, Belgian agriculture is marvellously successful, and strongly supports the argument for subdivision of ownership, and perfect mechanical ease in effecting land transfer. The closing passage of M. de Laveleye (p. 281) especially deserves to be quoted :—"There are no measures more conservative, or more conducive to the maintenance of order in society, than those which facilitate the acquirement of property in land by those who cultivate it."

The conclusions to be arrived at in the case of Belgium agree with those stated in the case of France by other writers. Again, we find that the cultivation by small farmers is not inferior to that by large farmers; and, again, we are a little startled at the fact, that the tax on land transfer amounts, even in France, to 6 per cent. Probably one effect of the war will be the utter ruin of very many small farmers, and the absorption of their little properties by more wealthy neighbours, who are enabled to tide over the calamities of the German invasion. Space does not allow of any reference to the cases of Germany or Russia, although the great reforms of Stein and Hardenburg ought not to be passed over without notice. Hereafter no one can claim to any extensive knowledge of the land-system of Europe who has not mastered the contents of the Cobden Club volume of Essays.

The Landlord and Tenant (Ireland) Act, 1870, with Introduction, Notes, Index, &c. ; Edited by W. G. Brooke, M.A., Barrister-at-law. Second Edition, Revised. Dublin : Hodges & Co. 1870.

THE Irish Land Act must in the nature of things be very frequently referred to by the legal advisers of the numerous persons who have inherited, or acquired, landed property in Ireland. For the assist-

ance or such, and indeed of all other persons connected with Irish land, there has been published, in Dublin, under the editorship of Mr. Brooke, a very compact, clear, and concise little volume, which contains the Act itself, explanatory notes on the sections, and a very elaborate index. The notes to those sections which define the rights of agricultural tenants to compensation in the event of their being ejected, and which ensure them a recompense for improvements made by them on their farms, are especially valuable. Without such a guide it will be difficult even for a professional reader of the first portion of the Act fully to comprehend its drift and purport. The preface states that the notes to Part II. of the Act (that intended to facilitate the purchase of their holdings by occupying tenants) have been furnished by Mr. Denny Urlin, whose long official employment, under the Incumbered and Landed Estates Acts, has rendered him familiar with all points arising out of land transfer. It must be remembered that any landlord in Ireland, although tenant for life only, is now enabled, with the approval of the court, to sell the fee simple of the land to the occupying tenant. This volume is exactly what it purports to be—an annotated edition of the Act. It abstains from reference to the “Cromwellian confiscation,” the “Devon Commission,” and all other historical reminiscences, and is in the highest degree terse and practical. It only remains to say that the first edition of this carefully edited little work was exhausted in less than a month; and that the very slight amount of alteration made in the second edition testifies to the industry and care bestowed, in the first instance, on the preparation of a valuable addition to the list of “legal handy books.”

A Treatise on the Law of Bankruptcy, containing a full Exposition of the Principles and Practice of the Law, including the Alterations made by the Bankruptcy Act, 1869, with an Appendix comprising the Statutes, Rules, Orders, and Forms. By George Young Robson, Esq. London: Butterworths, 7, Fleet Street. 1870.

THIS work must not be ranked with the many handbooks to the new Act, which have been issued from the press during the last eighteen months. It is, as its title asserts, a treatise on the Law of Bankruptcy. It is not a mere annotated edition of the Act of 1869. The treatise itself occupies 568 pages. Then follow the Bankruptcy Act, 1869, the Bankruptcy Repeal and Insolvent Court Act, 1869, the Debtor's Act, 1869, portions of the Act for the Abolition of Fines and Recoveries, 3 & 4 Will. IV. c. 74, bringing the pages down to 624. The general rules and the bankruptcy forms come next, and a very copious index completes the volume. The time has arrived when the law of bankruptcy may be scientifically treated as a distinct and separate branch of the law. The tendency hitherto has been to regard it as a collection of arbitrary rules without method

or principle. On this account we are glad to welcome the form of Mr. Robson's book. Instead of following the orthodox plan of giving us the sections of the Act with notes in microscopic type, in which are collected, with an infinite expenditure of labour, extracts from every case bearing directly or remotely on the subject, we have here a distinct attempt to discover the principles in accordance with which the law has been built. This method has peculiar advantages to recommend it to the practitioner. It gives him a grasp of his subject with which no mere summary of cases and text will supply him. It is the method, we venture to say, which will distinguish the new school of trained lawyers from those who have gone by, and whose appeal was invariably to precedent rather than principle. But it is to the student to whom a book, dealing with the subject in this form, is peculiarly valuable. The study of the law in the old method required infinite industry, but little brain. The new will require more thought, with less mere cramming of cases.

Mr. Robson has usefully, as it appears to us, sketched the history of the various doctrines and usages connected with bankruptcy. Here, again, we think that his design is right. The interpretation of our law, in any of its departments, can hardly be understood without reference to its growth.

Into the subject of the law of bankruptcy, which is treated of fully in a former page, we do not propose to enter here. Our object is simply to point out that Mr. Robson has furnished a well-written and carefully-planned book. The industry manifest in the collection of cases is quite as great as works which, for all practical purposes, do nothing else. We have great pleasure in giving it the warmest recommendation to our readers.

The Law of Commerce in Time of War, with particular Reference to the Respective Rights and Duties of Belligerents and Neutrals.

By Edward James Castle, of the Inner Temple, Barrister-at-Law.
London : William Maxwell. 1870.

THE unhappy war between France and Prussia is an inland rather than a naval war. No court of prize has as yet been erected, or called into existence in either country. Of captures there have been very few, and therefore not many questions of Maritime International Law have arisen likely to perplex the general community of our traders and shipowners; and the need of the work before us is scarcely as great as it would have been during the American or Crimean war. Nevertheless, it is well to have the different branches of the law of nations affecting trade and navigation clearly before us, and Mr. Castle has performed his task with admirable clearness and ability, though we cannot say with sufficient completeness. A loan is now being negotiated in this country by a belligerent power, and we would have expected to find in the work all the cases in point, showing how far it is to be considered a breach of neutrality. The question of the export of contraband is one of great difficulty,

and though the expediency of prohibition or permission is a political, rather than a legal argument, all the precedents bearing on the conduct of neutral States, with reference thereto, would have been useful. And the Foreign Enlistment Act, with its new provisions as regards the building of ships of war, might have been more fully explained. Questions of this character would have been more important for present interest than questions relating to licences. On the whole, however, the law relating to the rights of neutrals, rights of search, law of blockade, &c., is well stated, and the work is likely to be very useful at the present moment.

The Elementary Education Act (1870), with Introduction, Notes, and Index. With an Appendix, containing the Provisions of the Revised Code with regard to Grants for the Building of Schools, the Schools Sites Act, &c. By Hugh Owen, jun. London: Knight, 90, Fleet Street. 1870.

THERE ought to be a large demand just now for the Elementary Education Act, but we can testify from experience that this Act is not by any means easy to understand. The terrific handling it received in both Houses of Parliament has not made it peculiarly symmetrical. Whatever may be its merits, clearness of arrangement and *elegantia* do not rank among them. Probably this is inevitable when the work has passed through so many hands. Any help, therefore, by means of references from one part to another, or by means of notes, will save those who wish to become school-board representatives, and the many other readers who will have to become acquainted with the Act, a good deal of trouble. The best praise we can give Mr. Owen's book is, that its carefully prepared index, its full notes, and convenient size, will make it much more convenient, and its facts much more accessible, than is the Act as printed by the Parliamentary printers.

Chronological Table of and Index to the Indian Statute Book, from the year 1834, with a General Introduction to the Statute Law of India. By C. D. Field, M.A., LL.D., late Registrar of the Calcutta High Court. London: Butterworths. 1870.

THIS is a very useful work, similar in most respects to the Chronological Table of and Index to the Statutes of Great Britain, lately published by authority of Her Majesty's Government. The similarity is, however, as it appears, undesigned, and there is this important point of difference between the two works, that Mr. Field's book is the production of a private individual, and possesses no official sanction. It is, however, a valuable addition to the legal literature of India, and will prove extremely useful to any one desiring to investigate a point of Indian Law. The Indian Statute Law is of a very complicated character, a circumstance which renders the services

of such a guide as the work before us peculiarly valuable. The book consists of two distinct parts—the Table of Statutes and the Index. The first of these is arranged in parallel columns, showing at a glance the year and number of each Statute, the subject with which it deals, and the manner in which it has been affected by subsequent legislation, if any, on the same subject. Repealed Statutes are included in the Tables, but are distinguished by italics.

The second part of the work, *i.e.*, the Index to the Statutes, appears to be clear and accurate. It is hardly in our judgment sufficiently full, but it is only fair to say that it appears to be quite as full as the Index of English Statutes lately published by order of Government. An Introduction is prefixed to the work, giving a brief account of the origin and classification of Indian Statute Law. This part of the work is calculated to be of much service to all students of Indian law, as an explanatory sketch of the subject before them. The necessity of such an explanation is shown by the circumstance that there are no less than twenty-one different classes of laws prevailing in different parts of British India, and that these twenty-one different classes of laws have been made by eight different authorities. After such a statement we cannot do better than recommend every one who contemplates a plunge into the labyrinth to seek the guidance which Mr. Field's book is calculated to supply.

Humanity and Humanitarianism. By William Tallack. London : F. B. Kitto, 5, Bishopsgate Street. 1870.

MR. TALLACK's views, with reference to penal treatment and the prevention of crime, must always command respect. Indefatigable in his self-imposed task, that of bringing the English nation to condemn capital punishment both as barbarous and useless, he has touched and adorned the discussions upon reformatory treatment. The pamphlet before us urges, *inter alia*, that petty offenders should be confined a sufficiently long time to work out their own reformation and cost by industrial work, but at the same time cautions us against the system lately adopted in the United States of making the condition of a prisoner a luxury, and rendering his career safe, profitable, and even agreeable. The writer calls attention to the former almost perfect system of gaol discipline in Philadelphia, and laments its retrogression. Most justly does he deprecate the extreme severity of some English magistrates, but we should be glad to know under what law a man has been punished for trapping a fox. The remarks upon insanity are worthy of careful attention, and we gladly see that the principle of making parents of criminal children pecuniarily responsible for the cost of their maintenance in reformatories is warmly advocated. We concur with many of the writer's strictures upon capital punishment, and may give as an illustration of the alleged deterrent effect that within a few days of Mary Waters having been hung a woman attacks another, threatening that she will be the next to be hung at Horsemonger Lane. The observations upon prison labour and discipline merit consideration, and we would ask why

are military men, who have had the least previous experience of criminals and their habits, generally selected to deal with them. It seems somewhat absurd that these gentlemen are usually appointed governors of gaols and chief constables, frequently after long service abroad, and nearly always without any special qualifications for their post, beyond an alleged knowledge of discipline, a science not difficult of acquirement or involving any high mental education. We commend Mr. Tallack's treatise to all interested in the repression of crime.

The Criminal Law Consolidation Acts, with Notes of the Cases decided on their construction. By Edward W. Cox, S.L., Recorder of Portsmouth, and Thomas William Saunders, Esq., Barrister-at-Law, Recorder of Bath. Third Edition. London: *Law Times Office*. 1870.

VERY seldom in so small a work do we find the contributions of so many eminent writers upon the subjects treated of. The principles of punishment, the Forfeiture for Felonies' Act and the Habitual Criminals' Act are carefully considered by Mr. Serjeant Cox, the able Deputy Assistant-Judge of the Middlesex Sessions. Mr. Greaves, Q.C., clearly explains the law of arrest without a warrant, while a very useful table of crimes and their punishments has been specially compiled for this publication by Mr. Purcell. In the necessarily small compass of this notice it is almost impossible to do justice to the book before us. The single subject of the principles of punishment is one of much difficulty. As the Lord Chancellor, in a recent debate in the House of Lords, argued, "How are you to gauge the feelings of those who are called upon to act?" Admitting this, Mr. Serjeant Cox asks, "But is it practicable to frame anything in the nature of *principles* for the guidance of the judgment in the meting out of punishments? I have put the question to many judges, who have had more experience than myself, and I have found their opinions to differ widely. Some declared the framing of rules to be difficult, and the adoption of them impossible; others pronounce positively against the practicability of either making or acting upon rules; a few have expressed belief that rules might be found, or at least some guiding principles discovered. But all are of one mind in admitting that such a work would be of the utmost value, if only it could be executed with even partial success." In the hope that the design may not altogether be impossible, Mr. Serjeant Cox has devoted his attention to the matter in an essay, which will be read by all magistrates with much interest. We do not, however, attach so much weight, as the writer evidently does, to the suggestion that meetings of magistrates, held periodically, would be of service in procuring greater unanimity in sentences. We believe it has already been tried by one body of stipendiary magistrates, and has not been so successful as it apparently deserves.

The commentary on the law of forfeiture for felony constitutes an important portion of this work, and we entirely concur, it is much to be regretted that in the recent Statute opportunity was not taken to give the power of compensation and payment of expenses in cases of fraud, assault, and, in fact, in all offences attended with injury to the person or property of another, without reference to the ideal distinction between felony and misdemeanour. In the law of arrest without warrant, Mr. Greaves, the learned framer of the Consolidated Acts, gives his opinion upon an often recurring and imperfectly understood question of criminal law. To chief constables and others who have the direction of the police, Mr. Greaves' remarks are invaluable. The author shows most distinctly the error into which the *Times* has fallen when it stated broadly that "in a case of mere misdemeanour, indeed, except when a Statute enacts otherwise, a private individual is not justified in arresting without a warrant; and even an officer is not justified in so arresting, unless the misdemeanour is committed in his presence."

. . . The general proposition (says Mr. Greaves) as to private individuals is partly correct and partly erroneous. It is correct as to the cases of omissions and neglects, which have already been mentioned (such, for instance, as the neglect to provide food for a child or apprentice, the neglect to repair a highway by a party bound to repair *ratione tenuræ*;) "but it is erroneous in numerous other cases; and the important question is whether it is not erroneous in every case where the party is caught in the act—and whether, in every such case, a private person may not lawfully arrest the offender without a warrant." After quoting many decisions, Mr. Greaves seems to be of opinion that there has been, from very early times indeed, a regular current of decisions and judicial opinions, that any private person may arrest an offender caught in the act of committing a misdemeanour, and consequently that *Hollyday v. Oxenbridge* was only an instance of a previous well known rule. The right of arresting affrayers and persons found committing offences by night, with many other matters, is subsequently argued, and quotations are made from all the leading cases. The next contribution, also from Mr. Greaves' pen, is a lucid exposition of the obscure law of attempts to commit crimes. Then follow all the Statutes, and portions of Statutes, referring to criminal law as affected by Statute, and by judicial decision from the passing of the Criminal Law Consolidation Acts, to the end of the last session of Parliament, accompanied by most valuable notes, and, a *sine qua non* in such a work, a most copious index easy of reference. We are grateful to the writers for this book, which will be found a great assistance not only to those who have to administer the law, but to the legal profession. Devoid of pretence, simple and accurate in language, the essays upon the various subjects must ensure careful attention and considerable approbation. From their manner of treatment, the subjects may be read with interest by lay readers, while they resolve many doubts which have troubled our lawyers. We could only suggest that in a fresh edition, in order to make the

Criminal Law Consolidation Acts a complete epitome, it might be advisable to introduce a list of the foreign States, with which arrangements have been made for the surrender of criminals under the Extradition Act.

A Treatise on the Rules for the Selection of the Parties to an Action. By A. V. Dicey, Esq., of the Inner Temple, Barrister-at-Law, and Fellow of Trinity College, Oxford. London : Moxwell & Son. 1870.

THIS is exactly what a work on such a subject ought to be, combining the qualities of an admirable treatise with those of a convenient book of practice. It is no mere digest of cases or compilation from other writers, but from first to last shows unmistakable evidence of analytical and deductive power on the part of the author. The aim of Mr. Dicey has been to reduce the law of parties to an action to a systematic form, and the mode in which this is accomplished is by stating the law in a series of rules, each of which is illustrated by cases, and confirmed by quotations from judgments, or from text-books of authority. The advantages of such an arrangement in a book of reference are obvious, and in such a subject as that which is here treated, it serves to exhibit the substantial principles on which the whole of this branch of the law is founded.

From the examination we have been able to give to the work, we can have no hesitation in expressing a very favourable opinion as to the manner in which Mr. Dicey has executed the task he has undertaken. The general arrangement of the treatise is, of course, the simple and natural one which obviously suggests itself, viz., rules common to all actions, rules in actions on contract, and rules in actions for tort. But in framing the rules under the different heads, the author has shown great clearness and accuracy of expression, and much logical skill in the order he has adopted. The illustrative cases and quotations are carefully collected and greatly to the point ; they fully explain the subject which is under consideration, without encumbering it with irrelevant matter. Many of the questions discussed are of a difficult and intricate nature, but on all the subjects which we have looked into, we have found definite statements and sound views. It may perhaps be objected by some, that Mr. Dicey has too much enlarged the scope of the work, and has given us more law than merely relates to parties to actions. But it was scarcely possible to avoid this in what was intended to be a systematic treatise, and while such a comprehensive treatment will in no degree impair the value of the work for practical purposes, it will render it all the more valuable to the student.

The Common Law and Equity Practice of the County Courts, with Scales of Costs and Fees, the new Rules, and the more important Forms. By George Washington Heywood, Barrister-at-Law. London: W. Maxwell & Sons; Manchester: Able Heywood & Son. 1870.

A MORE concise and practical little book on a separate branch of law, whether for lawyers or laymen, we have seldom had occasion to notice. The method of arrangement adopted is that of tracing an action step by step through its various stages; and though the author has not gone much into detail of the cases cited, yet he has given in a few words the substance of the various precedents. All the costs and principal forms appertaining to a suit, both in Common Law and in Equity, are given in the appendices, and a voluminous index forms a ready reference to the contents of the volume. In consequence of the prospect of a Consolidation Act next session, and a readjustment of the Courts, the author has not thought proper, just now, to extend the bulk of the volume so as to include the provisions relating to Bankruptcy, Probate, or Admiralty. This is an unfortunate omission from a Text Book, which should treat of all matters coming under the jurisdiction of the Courts to which it has special reference. However, the business in the Courts at present being very small under either of those heads, and for the reasons assigned, some allowance may be made. It is to be regretted that the author had not waited another month or two before going to press, as, in that case, he would have had the advantage of adopting the legislative enactments of the session. The only Act he quotes was passed on June 20, while the Married Women's Property Act was passed on August 9, the provisions of which would have rendered necessary important alterations in several parts of the work. The author is indebted to his friend, Mr. S. B. L. Dunn, of the Chancery Bar, for an excellent chapter upon Equitable Jurisdiction. This being comparatively a new feature in County Court practice, the author has treated of it at some length, and has made ample references. The forms, too, are given entire. Altogether the work, at the low price of five shillings, is deserving encouragement.

Annotazioni alle Leggi Criminali per l'Isola di Malta e sue Dipendenze da essere di guida al Giurato. By a young Maltese Advocate. Malta, 1870.

IN the book before us we have an interesting account of the gradual adoption of the system of jury trial in Malta, as well as an able commentary of the new Penal Code for the Island. Jury trial was first introduced in Malta in 1815, in connection with a court for the trial of pirates, but cases of that kind were few, and for a long time a strong apprehension existed that it would not work well.

When, however, Sheriff Jameson went to Malta, to revise the code in 1842, he strongly recommended the introduction of jury trial in all criminal cases, and since then, by degrees, the principle has made way, till now it is in full operation. The Criminal Code applies to crimes committed by Maltese subjects in Malta and her dependencies; on the seas between the limits of the territorial jurisdiction of Malta; on board Maltese ships by Maltese subjects, out of the territorial jurisdiction of Malta; and within the dominions of the Porte. And in the commentary before us, there are able observations showing the familiarity of the author with the principles of private International Law, as well as with the general character of the Italian and other codes. We welcome this volume especially because we have quite a dearth of works on Colonial Laws. A collection of Colonial Laws is a great desideratum both for British jurisprudence, and for the guidance of the British courts in all our widely scattered possessions.

The Natural History of Law. By G. J. Johnson. Birmingham: Josiah Allen, Jun. 1870.

THE above is the title of a pamphlet reprinted from the essays of the Birmingham Speculative Club. We will not attempt to discuss Mr. Johnson's theory, the main propositions of which he says can be verified by Scripture, as well as the Statutes at large. The paper is cleverly written, and indicates that the author has bestowed great pains in its preparation.

The Journal of Jurisprudence and Scottish Law Magazine, for August, September, and October. Edinburgh: T. and T. Clark. 1870.

THE first of these numbers starts with some comments on the Digest of Law Commission, which unfortunately proved a failure, and recommends that the Government should appoint an experienced barrister to report upon the order, method, cost and machinery, for forming a Digest. Legal education is now a subject cropping up in Scotland as well as here. Much, therefore, is very sensibly put forward in reference to it. The law of nations, and the legal doctrine of the balance of power, is the subject of an article well worth perusing just now. Whilst deprecating the abuses and defects of late years in regulating the balance of power, the author urges that the principle is useful for the maintenance of the independence of each and all. The series of ably-written articles on the conflict of laws come to an end. Others on points of law appear, which, with the monthly reports of cases decided, statistics and local news make up the contents of this North British periodical.

The Canada Law Journal. Toronto. 1870.

The Albany Law Journal. Albany. 1870.

The Australian Jurist. Melbourne. 1870.

THE first of these maintains its former position as a full reporter of the cases decided in the Courts of Law. To the Colonial practitioner these cases will be found exceedingly useful. In addition, original articles and reprints are given in each number. The editor of the Albany, the only periodical, we believe in existence, that seeks to amuse the profession as well as instruct, by an arrangement of old and curious anecdotes and verses, ancient and modern, on the science and administration of the law, assures us that he has been complimented by one of our contemporaries, and scolded by another, for being too prone to fun and not sufficiently alive to a sense of the dignity of the law. In reply to this the editor as a body corporate assures our "sedate contemporary that we shall try to curb our fun now that vacation is over. We have been endeavouring to sugar-coat the dry pills of the law for summer treatment. Hereafter we shall endeavour to be as dignified—we cannot be as learned—as our kindly cousin-in-law."

We hope the editor will not become too grave at a season when mirth is more required to brighten up our faculties. The transition may be easy, but the re-assumption would be, we imagine, something analogous to a display of levity on the Bench. The "Humorous Phases of the Law," we should be sorry to see dropt. Light articles such as these, mixed up with current topics, with here and there a dash of fun, serves well as a relief to the reader of a more heavy and drier material, such as the Digest of Cases, &c. We have noticed some reprints from our Magazine. We have regularly received the numbers of the last named, which is a new weekly journal. Some need of such a publication as a means of reporting legal proceedings was no doubt much felt among the profession. In this way it will be useful for reference, and at the same time keep its subscribers well informed on the legal topics of the day.

Events of the Quarter, &c.

PROCLAMATION OF NEUTRALITY.

THE following is the Proclamation of Neutrality issued by Her Majesty at the commencement of the present war :—

Whereas, we are happily at peace with all Sovereigns, Powers, and States ;

And, whereas, notwithstanding our utmost exertions to preserve peace between all Sovereign Powers and States, a state of war unhappily exists between His Imperial Majesty the Emperor of the French and His Majesty the King of Prussia, and between their respective subjects and others inhabiting within their countries, territories, or dominions ;

And whereas we are on terms of friendship and amicable intercourse with each of these Sovereigns, and with their several subjects, and others inhabiting within their countries, territories, or dominions ;

And whereas great numbers of our loyal subjects reside and carry on commerce, and possess property and establishments, and enjoy various rights and privileges within the dominions of each of the aforesaid Sovereigns, protected by the faith of treaties between us and each of the aforesaid Sovereigns ;

And whereas we, being desirous of preserving to our subjects the blessings of peace, which they now happily enjoy, are firmly purposed and determined to abstain altogether from taking any part, directly, or indirectly, in the war now unhappily existing between the said Sovereigns, their subjects, and territories, and to remain at peace with, and to maintain a peaceful and friendly intercourse with each of them, and their respective subjects, and others inhabiting within any of their respective countries, territories, and dominions, and to maintain a strict and impartial neutrality in the said state of war unhappily existing between them ;

We, therefore, have thought fit, by and with the advice of our Privy Council, to issue this our Royal Proclamation.

And we do hereby strictly charge and command all our loving subjects to govern themselves accordingly, and to observe a strict neutrality in and during the aforesaid war, and to abstain from violating or contravening either the laws and statutes of the realm in this behalf or the law of nations in relation thereto, as they will answer to the contrary at their peril.

And whereas in and by a certain statute made and passed in the present year of Her Majesty, entitled, “An Act to regulate the

conduct of Her Majesty's subjects during the existence of hostilities between foreign States with which Her Majesty is at peace," it is, among other things, declared and enacted as follows :—

"Illegal Enlistment."

"If any person, without the licence of Her Majesty, being a British subject, within or without Her Majesty's dominions, accepts, or agrees to accept, any commission or engagement in the military or naval service of any foreign State at war with any foreign State at peace with Her Majesty, and in this Act referred to as a friendly State, or, whether a British subject or not, within Her Majesty's dominions, induces any other person to accept or agree to accept any commission or engagement in the military or naval service of any such foreign State as aforesaid,—

"He shall be guilty of an offence against this Act, and shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the Court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour.

"If any person, without the licence of Her Majesty, being a British subject, quits or goes on board any ship with a view of quitting Her Majesty's dominions, with intent to accept any commission or engagement in the military or naval service of any foreign State at war with a friendly State, or, whether a British subject or not, within Her Majesty's dominions, induces any other person to quit or go on board any ship with a view of quitting Her Majesty's dominions with the like intent,—

"He shall be guilty of an offence against this Act, and shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the Court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour.

"If any person induces any other person to quit Her Majesty's dominions, or to embark on any ship within Her Majesty's dominions, under a misrepresentation or false representation of the service, in which such person is to be engaged, with the intent or in order that such person may accept or agree to accept any commission or engagement in the military or naval service of any foreign State at war with a friendly State,—

"He shall be guilty of an offence against this Act, and shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the Court before which the offender is convicted, and imprisonment, if awarded, may be either with or without hard labour.

"If the master or owner of any ship, without the licence of Her Majesty, knowingly takes on board, or engages to take on board, or has on board such ship within Her Majesty's dominions any of the following persons, in this Act referred to as illegally enlisted persons,—that is to say,

"(1.) Any person who, being a British subject within or without

the dominions of Her Majesty, has, without the licence of Her Majesty, accepted or agreed to accept any commission or engagement in the military or naval service of any foreign State at war with any friendly State :

“(2.) Any person, being a British subject, who, without the licence of Her Majesty, is about to quit Her Majesty's dominions with intent to accept any commission or engagement in the military or naval service of any foreign State at war with a friendly State :

“(3.) Any person who has been induced to embark under a misrepresentation or false representation of the service in which such person is to be engaged, with the intent or in order that such person may accept or agree to accept any commission or engagement in the military or naval service of any foreign State at war with a friendly State :

“Such master or owner shall be guilty of an offence against this Act, and the following consequences shall ensue,—that is to say,

“(1.) The offender shall be punishable, by fine or imprisonment, or either of such punishments, at the discretion of the Court before which the offender is convicted ; and imprisonment, if awarded, may be either with or without hard labour ; and

“(2.) Such ship shall be detained until the trial and conviction or acquittal of the master or owner, and until all penalties inflicted on the master or owner have been paid, or the master or owner has given security for the payment of such penalties to the satisfaction of two justices of the peace, or other magistrate or magistrates having the authority of two justices of the peace ; and

“(3.) All illegally enlisted persons shall, immediately on the discovery of the offence, be taken on shore, and shall not be allowed to return to the ship.

“Illegal Shipbuilding and Illegal Expeditions.

“If any person within Her Majesty's Dominions, without the licence of Her Majesty, does any of the following acts—that is to say,

“(1.) Builds, or agrees to build, or cause to be built, any ship with intent or knowledge, or having reasonable cause to believe that the same shall or will be employed in the military or naval service of any foreign State at war with any friendly State ; or

“(2.) Issues or delivers any commission for any ship with intent or knowledge, or having reasonable cause to believe that the same shall or will be employed in the military or naval service of any foreign State at war with any friendly State ; or

“(3.) Equips any ship with intent or knowledge, or having reasonable cause to believe that the same shall or will be employed in the military or naval service of any foreign State at war with any friendly State ; or

“(4.) Despatches, or causes, or allows to be despatched, any ship with intent or knowledge, or having reasonable cause to believe that the same shall or will be employed in the military or naval service of any foreign State at war with any friendly State :

"Such person shall be deemed to have committed an offence against this Act, and the following consequences shall ensue :—

"(1.) The offender shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the Court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour.

"(2.) The ship in respect of which any such offence is committed and her equipment shall be forfeited to Her Majesty.

"Provided, that a person building, causing to be built, or equipping a ship in any of the cases aforesaid, in pursuance of a contract made before the commencement of such war as aforesaid, shall not be liable to any of the penalties imposed by this section in respect of such building or equipping if he satisfies the conditions following—that is to say,—

"(1.) If forthwith upon a proclamation of neutrality being issued by Her Majesty he gives notice to the Secretary of State that he is so building, causing to be built, or equipping such ship, and furnishing such particulars of the contract, and of any matters relating to, or done, or to be done under the contract, as may be required by the Secretary of State.

"(2.) If he give such security, and takes and permits to be taken such other measures, if any, as the Secretary of State may prescribe far insuring that such ship shall not be despatched, delivered, or removed without the licence of Her Majesty until the termination of such war as aforesaid."

"Where any ship is built by order of or in behalf of any foreign State when at war with a friendly State, or is delivered to, or to the order of such foreign State, or any person who to the knowledge of the person building is an agent of such foreign State, or is paid by such foreign State or such agent, and is employed in the military or naval service of such foreign State, such ship shall, until the contrary is proved, be deemed to have been built with a view to being so employed, and the burden shall lie on the builder of such ship of proving that he did not know that the ship was intended to be so employed in the military or naval service of such foreign State.

"If any person within the dominions of Her Majesty, and without the licence of Her Majesty—'By adding to the number of the guns, or by changing those on board for other guns, or by the addition of any equipment for war, increases or augments, or procures to be increased or augmented, or is knowingly concerned in increasing or augmenting, the warlike force of any ship which at the time of her being within the dominions of Her Majesty was a ship in the military or naval service of any foreign State at war with any friendly State, such persons shall be guilty of an offence against this Act, and shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the Court before which the offender is convicted; and imprisonment, if awarded, may be either with or without hard labour.'

"If any person within the limits of Her Majesty's dominions, and without the licence of Her Majesty—

"Prepares or fits out any naval or military expedition to proceed against the dominions of any friendly State, the following consequences shall ensue :

"(1.) Every person engaged in such preparation or fitting out, or assisting therein, or employed in any capacity in such expedition, shall be guilty of an offence against this Act, and shall be punishable by fine and imprisonment, or either of such punishments, at the discretion of the Court before which the offender is convicted ; and imprisonment, if awarded, may be either with or without hard labour.

"(2.) All ships and their equipments, and all arms and munitions of war, used in, or forming part of such expedition shall be forfeited to Her Majesty.

"Any person who aids, abets, counsels, or procures the commission of any offence against this Act shall be liable to be tried and punished as a principal offender."

And whereas by the said Act it is further provided that ships built, commissioned, equipped, or despatched, in contravention of the said Act may be condemned and forfeited by judgment of the Court of Admiralty, and that if the Secretary of State or chief executive authority is satisfied that there is a reasonable and probable cause for believing that a ship within Her Majesty's dominions has been or is being built, commissioned, or equipped contrary to the said Act, and is about to be taken beyond the limits of such dominions, or that a ship is about to be despatched contrary to the Act, such Secretary of State, or chief executive authority, shall have power to issue a warrant authorizing the seizure and search of such ship, and her detention until she has been either condemned or released by process of law : And whereas certain powers of seizure and detention are conferred by the said Act on certain local authorities :

Now, in order that none of our subjects may unwarily render themselves liable to the penalties imposed by the said Statute, we do hereby strictly command that no person or persons whatsoever do commit any act, matter, or thing whatsoever contrary to the provisions of the said Statute, upon pain of the several penalties by the said Statute imposed, and of our high displeasure.

And we do hereby further warn and admonish all our loving subjects, and all persons whatsoever entitled to our protection, to observe towards each of the aforesaid Sovereigns, their subjects, and territories, and towards all belligerents whatsoever, with whom we are at peace, the duties of neutrality ; and to respect, in all and each of them, the exercise of those belligerent rights which we and our Royal predecessors have always claimed to exercise.

And we hereby further warn all our loving subjects, and all persons whatsoever entitled to our protection, that, if any of them shall presume, in contempt of this our Royal Proclamation, and of our high displeasure, to do any acts in derogation of their duty as subjects of a neutral Sovereign, in a war between other Sovereigns, or in violation or contravention of the law of nations in their behalf, as more especially by breaking, or endeavouring to break, any

blockade lawfully and actually established by or on behalf of either of the said Sovereigns, or by carrying officers, soldiers, despatches, arms, ammunition, military stores or materials, or any article or articles considered and deemed to be contraband of war, according to the law or modern usages of nations, for the use or service of either of the said Sovereigns, that all persons so offending, together with their ships and goods, will rightfully incur, and be justly liable to, hostile capture, and to the penalties denounced by the law of nations in that behalf.

And we do hereby give notice, that all our subjects and persons entitled to our protection who may misconduct themselves in the premises, will do so at their peril, and of their own wrong ; and that they will in no wise obtain any protection from us against such capture or such penalties as aforesaid, but will, on the contrary, incur our high displeasure at such misconduct.

Given at our Court at Osborne-house, Isle of Wight, this 9th day of August, in the year of our Lord one thousand eight hundred and seventy, and in the thirty-fourth year of our reign.

God Save the Queen.

THE NEW LAW COURTS.

At a meeting of the Metropolitan Board of Works, held in August, Sir J. Thwaites in the chair, Mr. Le Breton presented a memorial, signed by 562 barristers and firms of solicitors having chambers in Lincoln's Inn and its vicinity, asking the co-operation of the Board in carrying out a proposed new road from Southampton Row, Holborn, to the Strand, and the Victoria Embankment at Norfolk Street—a scheme which had received the approval of the Hon. Society of Lincoln's Inn, the Council of the Incorporated Law Society, the First Commissioner of Works, and Mr. Street, the architect of the New Palace of Justice. This would be in conjunction with the proposed Mid-London Railway, which would have a junction at Hampstead with the London and North-Western, and would run on the Waterloo Station of the South-Eastern Railway, thereby enabling passengers and goods to be conveyed direct from the northern and midland counties to Folkestone, Dover, and the Continent without change of carriages. The memorial went on to say:—"That the promoters of the aforesaid railway are willing, as a concession to the public, to co-operate with your Board in constructing the following new roads in the line of their railway, that is to say:—(1.) A road from Vernon Place, Southampton Row, passing across Kingsgate Street to Holborn, and thence in the line of the Little Turnstile and Gate Street to the north-west corner of Lincoln's Inn Fields. (2.) A road from the south-west corner of Lincoln's Inn Fields, passing through Clare Market, and crossing Wych Street and Holywell Street to the Strand. (3.) An enlargement of Norfolk Street leading down to the roads now in course of construction which will communicate with the Thames Embankment. It is also proposed to make a direct communication between Vernon's Place and Theobald's Road, and to remove the pile of buildings between

Holywell Street and the Strand, and to widen the latter at its present narrowest point to seventy feet. That the aforesaid road, if constructed as proposed, will bring into communication, by a direct road, the Thames Embankment, the Strand, Holborn, and the Euston Road, with the districts of Hampstead, Highgate, Kentish Town, Holloway, and in general, the northern parts of London. That no such road now exists; and, in particular, that the district between Holborn and the Strand is entirely without means of communication except by narrow and tortuous streets of the worst character. That the proposed new openings will be most conveniently situated for giving access to the new Courts and offices of law, seeing that the section connecting Lincoln's Inn Fields with the Strand will pass very near to the west side of the site now selected for those buildings." The memorial was received and referred to the Works Committee.

The following estimate of the sum required in the year ending March 31, 1871, to enable the Lords Commissioners of Her Majesty's Treasury to make the necessary advances for the purchase of a site, erection of building, and other expenses, for the New Courts of Justice and Offices belonging thereto, under the "Courts of Justice Concentration (Site) Act, 1865," and the "Courts of Justice Building Act, 1865"; the amount of such advances to be repaid to the Consolidated Fund out of the surplus interest of the Court of Chancery, is 21,450*l*.

Sub-heads under which this vote will be accounted for by the Commissioners of Her Majesty's Works :

A.—Purchase of property	£2,000
B.—Erection of building	16,000
C.—Rates, taxes, &c.	3,000
D.—Incidental expenses	450

The total expenditure for purchase of property up to March 31, 1870, comprised the following items, viz.:—

	£	s.	d.	£	s.	d.
Purchase moneys, compensation, and interest	792,051	6	7			
Vendors' costs	36,819	8	3			
Surveyor's charges	8,336	5	0			
Legal expenses	28,610	5	5			
Accountants, clerks, &c.	3,433	19	6			
Preliminary expenses (Parliamentary agents, &c.), expenses of Royal Commission	17,750	16	4			
				887,002	1	1

In addition to which there has been paid—

(1.) To the architect on account of commission	2,000	0	0
(2.) For rates, taxes, &c.	10,258	8	9
(3.) For care of site, incidental expenses, &c.	1,040	11	3

Total expenditure . . £900,301 1 1

The net proceeds of the sales of old materials, amounting up to March 31, 1870, to about 10,550*l.*, have been treated as extra receipts, and by directions of the Treasury paid over to Her Majesty's Exchequer.

CRIMINAL STATISTICS OF IRELAND.

THE following is a comparative summary of the principal statistical results noticed in the Irish Report of Criminal Statistics, prepared by Dr. Neilson Hancock:—

The exceptional amount of crime at the end of 1869, and at the beginning of 1870, which led to the passing of the Peace Preservation Act in April, 1870 (Stat. 33 Vict. c. 9), is indicated by the statistics of agrarian and other outrages specially reported by the Constabulary. The agrarian outrages so reported increased from 19 in July to 337 in December, 1869. In January the number increased to 391, and after a sudden decrease in February, rose again to 356 in March. In July, 1870, the latest date before the presentation of this Report, the number of these outrages had fallen to 17, which is less than the number (19) in July, 1869, but is high as compared with the number (8) in July, 1868, or the number (5) in July, 1866, the year in which agrarian crime was at a minimum. The number of outrages so reported *other than agrarian*, which increased from 224 in August, 1869, to 248 in November, 1869, and to 385 in March, 1870, was reduced in June to 206. In July, a month usually exceptional with regard to outrages, the number reached 256, which, however, was less than the number (260) in July, 1869.

The general characteristics of Irish crime in 1869, as compared with crime in preceding years, are indicated by the following figures:—The number of treasonable and seditious offences attained its maximum in 1867, the year of the rising at Tallaght, near Dublin. The number of these offences in that year was 836. It fell to 126 in 1868, and to 68 in 1869. In the most heinous class of these offences, viz.—treasonable felony—the diminution was most marked, the cases being 385 in 1867, 16 in 1868, and only 3 in 1869. The best standard for the comparison of serious crime in general for a series of years is the number of persons for trial. This number attained a maximum in the year of distress, 1862, and again in 1867. The number of persons for trial was 6666 in 1862, 4561 in 1867, and 4151 in 1869; and making allowance for the difference of population, the number of persons for trial in every 100,000 of the people was 115 in 1862, 82 in 1867, and 75 in 1869, showing a decrease in 1869 of 9 per cent. as compared with the number for trial and population in 1867, and of 35 per cent. as compared with the number for trial and the population in 1862.

The criminal statistics of Ireland in 1869, and those of England and Wales for 1868, present the following points of comparison:—There was no person sentenced to death in Ireland, whilst 21 persons were sentenced to death in England and Wales in 1868, and 12 of these were executed. The verdicts of coroners' juries

show 33 cases of murder of persons above the age of 1 year in Ireland as compared with 25 in an equal portion of the population of England and Wales. A comparison of the number of indictable offences (not disposed of summarily) in Ireland with the number in a portion of the population of England and Wales equal to that of Ireland presents the following results—The number of such offences in Ireland in 1869 was 9178 as compared with the number (15,149) in an equal portion of the population of England and Wales. Comparing the statistics of the two countries with regard to the classes of crime, we find that there was an excess in England and Wales over Ireland of 6465 offences against property without violence, of 1006 offences against property with violence, of 241 cases of forgery and offences against the currency, of 112 attempts to commit suicide, of 59 cases of concealing birth, rape, and other immoral offences, of 40 attempts at murder and manslaughter, of 25 unnatural offences, and of 19 cases of perjury. From the number in excess in England, the following classes of offences showing an excess in Ireland, are to be set off in calculating the total excess. The offences showing an excess in Ireland consisted of 734 assaults, 678 unclassified offences, 511 malicious offences against property, 37 cases of riot, and 9 murders. The number of offences disposed of summarily (other than common assaults) which might be indicted was, in Ireland, 19,421, while in a portion of the population of England and Wales equal to that of Ireland, the number of this class of offences was 25,596. In offences disposed of summarily, comprising common assaults, offences against Acts of Parliament, and other offences not included under these heads, the number was 219,969 in Ireland, and in an equal portion of the population of England and Wales the number was 100,238. In connexion with this excess of minor offences in Ireland, it is to be observed that the Irish police act as inspectors of weights and measures, and as a revenue police. They are also much more numerous in proportion to the population than in England and Wales. The less serious character of the offences disposed of summarily in Ireland is shown by the nature of the punishments. In only 9 per cent. of the cases were the persons punished by imprisonment, while in 25 per cent. of the cases in England and Wales this punishment was inflicted. On the other hand, in 79 per cent. of the cases in Ireland fines were imposed, and in only 62 per cent. of the cases in England and Wales. The number of criminal classes known to the police was 7448 in Ireland, as compared with 14,509 in an equal portion of the population of England and Wales.

The statistics of offences in connexion with the Contagious Diseases Act, to show the extent of its operation, have not been collected for the present volume, but the following statistics have an important bearing upon the social aspects of the question by indicating a very intimate connexion between sexual immorality and crime in the following respects:—One-third of the whole number of women apprehended for indictable offences in Ireland were prostitutes, and nearly one-third of the women proceeded against summarily belonged

to the same class; and of those undergoing imprisonment no less than 61 per cent. The Coroners' statistics with respect to verdicts of wilful murder of children aged one year and under show 43 cases of infanticide in Ireland as compared with 42 in an equal portion of the population of England and Wales. The recent disclosures as to baby-farming and unregistered burial of still-born children, however, indicate that infanticide prevails to a greater extent in England than is disclosed by the coroners' returns. The number of infanticides ascertained by coroners' juries is in Ireland about 53 times, and in England and Wales 55 times, the number of murders occurring amongst an equal portion of the population at other periods of life on an average.

The extent to which crime amongst women arises from their being deprived of the benefit of home influence is shown by the statistics of prisoners of Irish birth in prisons in England and Wales. While the number of men of Irish birth in English prisons in 1869 was only 11 per cent. of the entire number of prisoners, the number of women of Irish birth in the same prisons reached 22 per cent., or nearly a fourth of the entire number. The defects in our existing arrangements, both in Ireland and England and Wales, for securing the education of the most helpless classes of the community and those most exposed to temptation, is shown by the following figures:—In Ireland 37·4 per cent. of the men and 51·2 of the women, undergoing imprisonment, could neither read nor write, and 33 per cent. of the men and 40 per cent. of the women, undergoing imprisonment in England and Wales were in the same state of ignorance. Of the children committed to reformatories in 1869, 48·5 per cent. could neither read nor write; 35 per cent. could read, or read and write imperfectly; and only 16·5 per cent. could read and write well. Of the children committed in 1868 to English reformatories, 51·6 per cent. could neither read nor write, 40·8 per cent. could read and write imperfectly, and only 7·6 per cent. could read and write well. The want of industrial schools to meet the case of neglected children, which has been pointed out in these statistics for many years, was remedied by the extension of the Industrial Schools Act to Ireland, in 1868. No less than 22 schools have been opened under the Act in 1869, and 232 children received.

With regard to another helpless class of offenders, viz., Criminal Lunatics, the salutary change in the law providing against their being detained in gaols, which was passed in 1867 (Stat. 30 & 31 Vict. c. 118), has been carefully carried into effect. The number of Lunatics detained in gaols was—on the 31st December, 1867, 331; on the 31st December, 1868, 52; and on the 31st December, 1869, only 5. The number of criminals under detention as Lunatics in Ireland in 1869 was 2932, whilst the number in 1868, in a portion of the population of England and Wales equal to that of Ireland, was only 216. The excess appears to be caused by the very large number committed by justices as dangerous persons at large. Three thousand five hundred and thirty-eight persons were

committed by justices in Ireland, and only 38 in England and Wales. Of these, 3240 were committed as dangerous persons at large in Ireland, and 52 for want of sureties, while only 17 were committed in England and Wales for want of sureties, and none as dangerous persons at large.

With regard to the detection of crime, it appeared from information collected, prior to the introduction of the Peace Preservation Act, 1870, that very serious difficulty existed, as in previous years, in securing the detection or conviction of persons for agrarian crime. But taking the entire number (9178) of crimes returned (including agrarian offences) the number of persons apprehended was 6001, or in the proportion of 65 per cent. to the crimes returned. In England and Wales the apprehensions were only in the proportion of 49·9 per cent., and it is stated that the highest number of apprehensions for crimes ever attained in England was in 1863, when it was 58 per cent. The larger number of persons apprehended and the system of public prosecutions in Ireland leads to a larger number of cases of strong suspicion being prepared for prosecution than in England and Wales, where prosecutions are to such a large extent in private hands. This leads to a larger number of prosecutions being abandoned, and a larger number of bills being ignored by the Grand Juries. The number not prosecuted in England and Wales was 32, or 0·15 per cent. of the prisoners sent for trial, while the number not prosecuted in Ireland was 364, or 8·7 per cent. Of 20,091 persons committed in England and Wales, the number with respect to whom the Grand Jury ignored the bills was only 937, or 4·6 per cent. Of 4151 persons committed for trial in Ireland, the number against whom the bills were ignored was 413, or 10 per cent. Of those actually brought to trial the acquitted were 860, or 26 per cent. The number of convictions was 2452, or 74 per cent. In England and Wales the acquittals were 4046, or 21·2 per cent.; and the convictions numbered 15,033, or 78·8 per cent.

LOCAL TAXATION.

THE following report has been issued by the Select Committee appointed to inquire and report whether it is expedient that the charges now locally imposed on the occupiers of rateable property should be divided between the owners and occupiers, and what changes in the constitution of the local bodies now administering rates should follow such division :—

“(1.) The Committee, without pledging themselves to the view that all rates should be dealt with in the same manner, are of opinion—(a) that the existing system of local taxation, under which the exclusive charge of almost all rates leviable upon rateable property for current expenditure, as well as for new objects and permanent works, is placed by law upon the occupiers, while the owners are generally exempt from any direct or immediate contributions in respect of such rates, is contrary to sound policy; (b) that the evidence taken before your Committee shows that in many cases the burden of

the rates, which are directly paid by the occupier, falls ultimately, either in part or wholly, upon the owner, who, nevertheless, has no share in their administration; (c) that in any reform in the existing system of local taxation, it is expedient to adjust the system of rating in such a manner that both owners and occupiers may be brought to feel an immediate interest in the increase or decrease of local expenditure, and in the administration of local affairs; (d) that it is expedient to make owners as well as occupiers directly liable for a certain proportion of the rates; (e) that, subject to equitable arrangements as regards existing contracts, the rates should be collected, as at present, from the occupier (except in the case of small tenements, for which the landlord can now by law be rated), power being given to the occupier to deduct from his rent the proportion of the rates to which the owner may be made liable, and provision being made to render persons having superior or intermediate interests liable to proportionate deductions from the rents received by them, as in the case of the income-tax, with a like prohibition against agreements in contravention of the law.

"(2.) The Committee have examined many witnesses, and received at their hands very conflicting opinions as regards the proportion in which the burden of rates at present falls relatively on owners and occupiers.

"(3.) That in the event of any division of rates between the owner and occupier, it is essential that such alterations should be made in the constitution of the bodies administering the rates as would secure a direct representation of the owners adequate to the immediate interest in local expenditure which they would thus have acquired.

"(4.) That justices of the peace should no longer act *ex officio* as members of any local board in which such direct representation of owners has been secured.

"(5.) That the great variety of rates levied by different authorities, even in the same area, on different assessments, with different deductions and by different collectors, has produced great confusion and expense, and that in any change of the law as regards local taxation, uniformity and simplicity of assessment and collection, as well as economy of management, ought to be secured as far as possible.

"(6.) That the consolidation into one rate of all local rates collected within the same area is a matter of great importance, and that your Committee concur in the resolution of the Select Committee on Poor Rates Assessment, 1868, which recommended one consolidated rate—viz., 'that a demand note should be left with each ratepayer on the rate being made, stating the amount of the requisitions, the rate in the pound for each purpose, and the period for which the rate is made, the rateable value of the premises, the amount of the rate thereon, and of each payment' of the instalments of the rates.

"(7.) That while it is necessary to make provision for limiting, as far as practicable, the disturbance of existing contracts, it would be, on many grounds, undesirable and almost impracticable to extend the

exemption of property held under leases from the operation of the proposed changes until the expiration of such leases.

“(8.) That the exclusion of the owners of property held under long leases from the right of voting for local authorities, after the proposed changes had taken effect in respect of other property, would lead to much inconvenience and confusion; while, on the other hand, it would be inadmissible to allow them to vote unless they acquired an immediate interest in the rates.

“(9.) That the difficulties of the case would be equitably met by exempting the owners of property held under lease from the proposed division of rates for a period of three years, and by providing that after the expiration of that time the occupiers of such property should be entitled, equally with all other occupiers, to deduct from the rent the proportionate part of the rates to which the owner may become liable, power being given to the owner at the same time to add to his rent a sum equivalent to the like proportionate part of the rates, calculated on the average annual amount of the rates paid by the occupier during the three years above referred to.

“(10.) That by the terms of the reference to them, your Committee were limited to the question of the division of the charges on rateable property between the owners and occupiers, and what changes in the constitution of local bodies administering rates should follow such division; and they have consequently been precluded from entering upon the inquiry of the relations of local and imperial taxation, and the nature of the property liable to the same.

“(11.) That your Committee are of opinion that the inquiry on which they have been engaged forms only one branch of the general question of local taxation, and that other considerations, besides those which have been submitted to their investigation, should be previously taken into account in any general measure giving effect to the above recommendations.”

PRISON MINISTERS' ACT.

THE Select Committee appointed to inquire into the operation of the Prisons Act and Prison Ministers Act, so far as respects the religious instruction provided for prisoners other than those belonging to the Established Church, have agreed to the following report:—

“Your Committee have taken evidence upon the working of the Prisons and Prison Ministers Acts, by which the appointment of prison ministers other than the chaplain of the Established Church is left to the discretion of the different prison authorities throughout the country. The result has been great inequality in the working of the system. In some prisons a Roman Catholic prison minister is appointed with an adequate salary, and is placed on terms of equality with the Protestant chaplain; in others a Roman Catholic prison minister is appointed with a salary, but is not permitted to assemble the Roman Catholic prisoners for Divine service, being restricted to visiting them in their cells; in a third class, a Roman Catholic clergyman is permitted to visit the prisoners of his persuasion, and to assemble them for Divine service, but is denied a salary, while in a

fourth the visits of a Roman Catholic clergyman are only permitted at the express desire of a prisoner. This inequality is specially felt as a grievance by Roman Catholic prisoners, who cannot receive the ministrations of the Established Church without offending against the laws of their own religious persuasion.

"Your Committee are of opinion that it is inexpedient and contrary to sound policy that such inequality should exist in the working of our prison system, and that it is desirable that prisoners of all religious persuasions should be, as far as possible, placed upon a footing of equality with regard to religious ministration and instruction. In this opinion they are supported by the evidence of Captain DuCane, Colonel Henderson, the late Chairman of the Directors of Convict Prisons, and Sir Walter Crofton, as to the satisfactory working of the system in the Government prisons, where salaried Roman Catholic chaplains attend the prisoners of their own persuasion, and are recognised as officers of the prison. Your Committee recommend that this system should be made general throughout the country.

"The complaints which have arisen have related almost exclusively to Roman Catholics. The cases in which Protestant prisoners have objected to join in Church of England worship, or to receive spiritual assistance from the chaplain, are very rare, and your Committee are of opinion that when such cases may occasionally occur, they may be satisfactorily met by the prison authorities under the powers which, by Act of Parliament, they at present possess.

"Your Committee are, therefore, of opinion that prison authorities should be required by law to appoint Roman Catholic ministers in prisons in which Roman Catholic prisoners are confined, and that hereafter the Roman Catholic minister, when so appointed, shall be classed as one of the officers of the prison, and shall receive an adequate salary for his services.

"Your Committee are of opinion that the prison minister so appointed should receive a salary according to the following scale:— If the average number of prisoners belonging to the Roman Catholic religion during the last three years shall have been more than ten and less than twenty, the minimum salary to be 25*l.*; more than twenty, and less than 100, 50*l.*; more than 100, and less than 200, 100*l.*; more than 200, and less than 300, 150*l.*; more than 300, 200*l.*

"Your Committee recommend that the Secretary of State should have power to transfer prisoners of any denomination, whose sentences exceed three months, from one prison to another, in order to give greater facilities for religious worship and instruction according to their special tenets."

THE Social Science Association, with which is united the Law Amendment Society, held its annual Congress at Newcastle-on-Tyne, on September 21. Lord Neaves presided over the Jurisprudence Department. The Metropolitan and Provincial Law Association met at Bristol on October 11, under the presidency of J. F. Beever, Esq. The papers at both meetings were very good and the discussions well attended.

APPOINTMENTS.

LORD JUSTICE MELLISH has received the honour of knighthood, and with Sir William Heathcote, Bart., have been sworn of Her Majesty's Most Honourable Privy Council.

The Attorney-General, Sir Robert Collier, was appointed Recorder of Bristol, but shortly afterwards resigned; thereupon Mr. Montague Bere, Q.C., was appointed Recorder. Mr. J. O. Griffiths, of the Oxford Circuit, has been appointed Recorder of Reading, in the place of Mr. Macnamara, resigned.

Mr. William Hazlitt, Senior Registrar of the Court of Bankruptcy, has been appointed Chief Registrar of that Court, in the place of Mr. J. T. Miller, resigned.

Mr. H. Macnamara, Mr. H. J. Bushby, and Mr. George Chance, have been appointed Metropolitan Stipendiary Magistrates. The first named has since resigned. The vacancies were created by the death of Mr. Selfe and the resignation of Mr. Elliott.

Mr. Edmond Beales has been appointed County Court Judge of the Cambridge District in the room of the late Mr. John Collyer.

Mr. C. S. C. Bowen, Barrister-at-Law, and Mr. A. C. Sellar, Advocate (Secretary to the Lord Advocate), have been appointed Commissioners to inquire into the alleged prevalence of the Truck System, and into the alleged systematic disregard of the Act which prohibits in certain trades the payment of wages in goods. Mr. R. S. Wright, Barrister, Fellow of Oriel College, Oxford, is Secretary.

Mr. H. T. Cole, Q.C., has been appointed to succeed the late Mr. Sergeant Kinglake as leading Counsel to Her Majesty's Post Office on the Western Circuit.

Mr. W. John Ewins Bennett, Mr. J. Stratford Dugdale, and Mr. Charles Hamilton Bromley, have been appointed by the Lord Chief Baron Revising Barristers for the Midland Circuit; Mr. Henry Frederick Gibbons and Mr. Saint have been appointed Assistant Revising Barristers.

Mr. Herbert William Fisher, Barrister-at-Law, has been appointed Vice-Warden of the Stannaries, in the place of Sir Edward Smirke, resigned.

The Eldon Law Scholarship has just been awarded by the Trustees to Mr. Alfred Barratt, B.A., Fellow of Brasenose College, formerly of Balliol College, Oxford.

Mr. Patrick Cumin, Barrister-at-Law, has been appointed an Assistant-Secretary to the Committee of Council on Education.

Professor Leone Levi is delivering eight Lectures at King's College, on the rights and duties of belligerents and neutrals, the effects of war on commerce, and questions connected with contraband of war.

Mr. Edwin Andrew, Solicitor, of Liverpool, has been appointed Town Clerk of the Borough of Salford; Mr. Alexander Grant Meek, Solicitor, Town Clerk of Devizes, and Clerk to the Local Board of Health; Mr. F. Frederick Giraud, Solicitor, Town Clerk of Faversham, and also Clerk of the Peace; Mr. Samuel George Johnson, Solicitor, of Faversham, Town Clerk of the Borough of Nottingham; Mr. O. F. Read, Solicitor, of Mildenhall, Suffolk, Clerk to the Borough Magistrates of Thetford, Lincolnshire; Mr. Edward Arnold, Solicitor and Town Clerk, of Chichester, Clerk to the Magistrates of that city; Mr. Robert Purvis, Solicitor, Clerk to the Magistrates of South Shields; Mr. G. W. Whittall Lovell,

Solicitor, of Banbury, Clerk to the Magistrates of Deddington; Mr. Shafto Robson, Solicitor, of Newcastle and Gateshead, Clerk to the Borough Magistrates of Gateshead. Mr. James Cook, Solicitor, has been elected to the office of Borough Treasurer, of Bridgewater. Mr. Robert Fisher Thompson, Solicitor, has been appointed Registrar of the County Court at Kendal; Mr. John Houchen, Solicitor, Registrar of the Thetford Court. Mr. J. Foster Watson, Solicitor, Assistant Registrar of the County of Liverpool, has been appointed Joint Registrar with Mr. Hine.

Mr. Charles Duffell Faulkner, Solicitor, of Deddington, has been elected Coroner for the Northern Division of Oxfordshire; and Mr. James Read, jun., Solicitor, of Mildenhall, Suffolk, Coroner for the Borough of Thetford.

Mr. Henry Jackson, Solicitor, of St. Helen's Place, City, has been elected Clerk to the Worshipful Company of Cordwainers.

Mr. Frederic Morehouse Metcalf, Solicitor, of Wisbeach, Cambridgeshire, has been appointed a Public Notary by His Grace the Archbishop of Canterbury, with authority to practice at Wisbeach and within a circle of ten miles of that town.

Mr. C. U. Laws, Solicitor, of Newcastle-upon-Tyne, has been appointed by His Grace the Duke of Northumberland to be Steward of the Copyhold of Tynemouth, in the place of Sir Walter Riddell, Bart.

Mr. W. B. Moore, Deputy Clerk to the Borough Magistrates of Wolverhampton, has been appointed Clerk to Mr. J. E. Davis, Stipendiary Magistrate of Sheffield.

IRELAND.—Viscount Monk, the Right Hon. George Alexander Hamilton, and Mr. William Richard Le Fanu, Civil Engineer, have been appointed Commissioners to inquire into and report upon the total amount of the sums received by the Hon. Society of King's Inn, Dublin, upon the admission of attorneys and solicitors, as deposits for chambers; and in what manner the same, or any part thereof, has been applied and disposed of, and whether any, and what portion, of the amount remains unappropriated to the purposes for which it was received, and whether the Incorporated Society of Attorneys and Solicitors of Ireland are in possession of suitable buildings for the accommodation of that branch of the profession of which they are the governing body.

Mr. Samuel M'Curdy Greer has been appointed to the Recordship of Derry, in the stead of the late Mr. Alexander S. Mehan.

Mr. Edward Greer has been appointed Sessional Crown Solicitor for the County of Armagh, in the room of Mr. M'Kinstre, deceased.

SCOTLAND.—Mr. James Arthur Crichton, Advocate, has been appointed Sheriff of Fifeshire, in room of Lord Mackenzie.

Mr. Henry Cockburn MacAndrew, Procurator and Notary Public, Inverness, has been appointed Sheriff Clerk of Inverness-shire, in room of the late Mr. Patrick Grant.

AUSTRALIA.—Mr. R. J. Wallcott, Barrister-at-Law, has been gazetted Attorney-General of the Colony of Western Australia.

INDIA.—Mr. Francis Stranger Leathes, Solicitor, of Bombay, has been appointed Clerk to the Justices of the Peace for the town and island of Bombay.

Necrology.

July.

- 13th. HALIDAY, A. H., Esq., Barrister-at-Law, aged 62.
- 16th. BAYS, George Henry, Esq., Solicitor, aged 72.
- 24th. WELLER, George, Esq., Solicitor, aged 77.
- 25th. HODGKINSON, George, Esq., Solicitor, aged 60.
- 25th. TILLEARD, John, Esq., Solicitor, aged 76.
- 25th. HATCHARD, Samuel, Esq., Barrister-at-Law.
- 26th. ASPLAND, A. Sydney, Esq., Barrister-at-Law, aged 60.
- 27th. LUCAS, Robert W., Esq., Solicitor, aged 54.
- 27th. FOSS, Edward, Esq., Barrister-at-Law, aged 83.
- 31st. WHYTE, J. C., Esq., late acting Judge at Hong Kong.

August.

- 3rd. EMERSON, George, Esq., Barrister-at-Law, aged 34.
- 3rd. NEWMAN, William, Esq., Solicitor, aged 43.
- 3rd. FREEMAN, Luke, Esq., Solicitor, aged 86.
- 5th. WEST, Martin J., Esq., late Commissioner in Bankruptcy, aged 54.
- 8th. BEST, George, Esq., Barrister-at-Law, aged 71.
- 9th. CLARKE, R. Eagle, Esq., Solicitor.
- 11th. RAM, James, Esq., Barrister-at-Law, aged 77.
- 14th. WILLIAMS, J. Price, Esq., Barrister-at-Law, aged 56.
- 17th. BALL, John, Esq., Solicitor, aged 88.
- 17th. CAMPBELL, E. Selby, Esq., Barrister-at-Law, aged 31.
- 20th. SNOWDON, Henry, Esq., Solicitor, aged 62.
- 22nd. POLLOCK, Right Hon. Sir Frederick, Bart., late Lord Chief Baron of the Exchequer, aged 86.
- 23rd. DAVIES, Thomas, Esq., Solicitor, aged 53.
- 25th. JONES, John, Esq., Solicitor.
- 27th. CAVE, Charles, Esq., Solicitor, aged 61.

- 28th. POWELL, James, Esq., Solicitor, aged 45.
29th. TOWNSEND, G. B., Esq., Solicitor, aged 56.
30th. DEAN, Ellis, Esq., Solicitor, aged 30.

September.

- 1st. COLLYER, John, Esq., County Court Judge, aged 69.
6th. NAYLOR, Charles, Esq., Solicitor, aged 64.
6th. SELFE, H. Selfe, Esq., Stipendiary Police Magistrate, aged 59.
8th. GRUNDY, Thomas, Esq., Solicitor, aged 64.
8th. MILNE, Nathaniel C., Esq., Solicitor, aged 66.
9th. CHAMBERS, W. G., Esq., Solicitor, aged 24.
11th. CLIFFORD, Hon. Charles T., Barrister-at-Law, aged 73.
12th. HARDING, T. Tuffley, Esq., Solicitor.
12th. CHAPMAN, Benedict L., Esq., Barrister-at-Law, aged 59.
13th. CHAWNER, R. Croft, Esq., Barrister-at-Law, aged 65.
14th. DODGE, Thomas, Esq., Solicitor, aged 59.
16th. GRAY, George, Esq., Solicitor, aged 61.
18th. PARKER, George, jun., Esq., Barrister-at-Law, aged 25.
19th. DUCKWORTH, Herbert, Esq., Barrister-at-Law, aged 37.
21st. MATTHEWS, J. B. D. G., Esq., Solicitor, aged 51.
21st. MUSHETT, William, Esq., Barrister-at-Law, aged 70.
21st. BISHOP, Thomas, Esq., Solicitor, aged 75.
23rd. NORTON, Theodore, Esq., Barrister-at-Law, aged 70.
23rd. GRIFFITHS, W. H., Esq., Barrister-at-Law, aged 40.
25th. HUBBARD, Joseph J., Esq., Solicitor, aged 69.
26th. BACON, W. J., Esq., Barrister-at-Law, aged 32.
31st. WHISTON, William, sen., Esq., Solicitor, aged 90.

October.

- 5th. TATHAM, M. S., Esq., Solicitor.
10th. WALMSLEY, Thomas, Esq., Solicitor, aged 66.
10th. BARRETT, J. Morton, Esq., Solicitor, aged 52.
14th. VIGURS, Louis, Esq., Barrister-at-Law, aged 54.
13th. DRYDEN, Erasmus H., Esq., Solicitor, aged 47.

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ART. I.—THE GAME LAWS JURISPRUDENTIALLY
CONSIDERED.*

BY EDWARD WEBSTER.

RECENT events render a consideration of the game laws on jurisprudential principles very opportune, for it may be predicated from the great interest which has been manifested by agricultural associations with regard to those laws, and from the disputed views amongst the co-partners of the soil concerning them, and from the agrarian demand for their abolition, not only that the game laws cannot long remain as they are, but that animosities in connection with them can never be permanently allayed, until they have received from the Legislature a consideration, based on the just rights of property, and the consequent welfare of the community. It is an indisputable fact that the Legislature, when bringing into existence the game laws, whether those formerly or whether those now in operation be regarded, has proceeded on principles purely arbitrary, for whilst inflicting severe penalties for the unlawful pursuit of game, no property in it has been created, and jurisprudence, which is scientific legislation, cannot exist without a law of property founded on

* A paper read at a meeting of the Juridical Society.

what is morally right,* or, where there is no property, without *primâ facie*, permitting the full enjoyment of natural liberty. Jurisprudence sacredly regards the lawful exercise of all natural rights, but she regards them with reference to the common welfare, and therefore is justified, if, and when, the welfare of the State requires their restriction, in restraining the exercise of them. For example, no Legislature is justified in qualifying the natural right to pursue and capture wild animals, except for the purpose of putting in operation a higher principle of jurisprudence. The rule is well expressed in the following language—

“ Though the civil law can enjoin nothing which the law of nature forbids, nor forbid anything which that enjoins, yet it may restrain natural liberty and prohibit what was naturally lawful, and consequently by its own authority may prevent and hinder that property and dominion which might otherwise be lawfully obtained.”†

The game laws are, at present, generally regarded with sentiments of discontent. In the homely but forcible language of the tenant farmer, they are not unfrequently spoken of as “the curse of the country.” These sentiments of discontent vary, and are divisible as follows :—(1st,) Sentiments founded on self-interest. (2ndly,) Sentiments in their nature agrarian. (3rdly,) Sentiments founded on jurisprudential considerations ; and (4thly,) Sentiments founded on expediency.

From self-interest the cultivator of the soil, whether there be an agreement reserving the game or not, desires to have vested in him an absolute and exclusive property in it, the effect of which would be to give him a monopoly of one field sport, and the great pecuniary advantages obtainable from that monopoly. On the other hand, landlords from the same motive, many of them at least, desire to have a similar property, not only to be able to continue their present exclusive right of

* *Jurisprudentia est divinarum atque humanarum rerum notitia, justi atque injusti scientia.*—Just. Inst., Lib. I., tit. 1.

† Puffendorf, Book II., c. 2, s. 57.

shooting, but to assign that right in order to receive two rents from their land, one derived from the farm stock, the other from the game.

The sentiments secondly before described are entertained by very many, indeed by the mass of the people, many of whom become almost frantic when a restriction on any natural right to pursue and capture wild animals is mentioned; and their prejudices are so strong, that even their parliamentary representatives are capable of placing game (which affords in abundance human food) in the same category as the carnivorous and predatory animals.*

In the presence of persons entertaining either the first or second class of the foregoing sentiments, jurisprudence wisely remains silent, pointing to justice, and the laws of property and order.

It is expedient at this stage of my observations, with a view to scientific legislation, to classify certain wild animals, including fish, as follows :—

Class 1.—*Feræ naturæ*, graminivorous, granivorous, or in confinement, also fish in confinement, viz., hares, rabbits, deer when in confinement, pheasants, partridges, wood pigeons, larks, landrails, quails, and their eggs; pond fish, and their spawn†, and shell fish in artificial beds.

Class 2.—*Feræ naturæ*, carnivorous, vermivorous, or insectivorous, and fish not in confinement, viz.—eagles, hawks, crows, jays, magpies, wildfowl, woodcocks, snipe, water fowl, not domesticated, fish in fresh water streams and their spawn, foxes, badgers, &c.

Class 3.—*Feræ naturæ*, found on wild land, that is, on moors and in forests, on which at present there is a restricted right to pursue and capture them, viz.—red deer, roe deer, grouse, moor game, that is, black game, ptarmigan, bustards, and their eggs, and the animals in Classes 1 and 2, when on

* For example "Tigers." See *Journal of the Social Science Association* 1869, pp. 383, 384, 385, and 386.

† The spawn of fish is mentioned because, thanks to the progress of man's intellect, it has become an important article of trade.

wild land, and the eggs of the birds in Class 1 when on wild land.

So far as the pursuit, or the pursuit and capture, of any of the foregoing creatures is restricted by law, the law is statutory, consisting of Acts of Parliament commonly known as the game laws, though to many that expression conveys an idea confined to the preservation, especially against night attacks, of certain specified animals; but as the jurisprudential principles, on which laws for the preservation of wild animals should be founded, are now alone intended for consideration, those Acts of Parliament are not enumerated, nor is it necessary to refer to their provisions, except for the purpose of observing that under the word "game," owing to the provisions of 1 & 2 Will. IV. c. 32, s. 2, hares, pheasants, partridges, grouse, heath or moor game, black game, and bustards are commonly considered as included. Rabbits, therefore, are not strictly game.

There is at present no property in game. The words of Lord Chelmsford in the case of *Blades v. Higgs and another* (*Law Journal*, H.L.C., N.S., Vol. XXXIV., parts 2-4, p. 291), may be regarded as an unassailable declaration of the law. "With respect to wild and unreclaimed animals," observes his lordship, "there can be no doubt that no property exists in them so long as they remain in a state of nature." And again, "*Animals feræ naturæ*, when killed, or reduced into possession by the owner of the land where they are found, or by his authority, become instantly his property." In this respect our law and the civil law are alike, for by the latter property existed only in animals capable of being identified.* Nevertheless our law prescribes when, where, and by whom game can be lawfully captured, and exacts obedience by severe penalties, some of them personal. To an infringement of the game laws a name of uncertain origin, and not denoting any moral offence, is given, a name distinct from felony and all varieties of felony—that name is "poaching."

* *Just. Inst.*, Lib. II., tit. 1, s. 12.

The game laws, therefore, do not prohibit what is wrong, nor, upon any jurisprudential principle, command what is right; but are simply laws of terror, which any subject may, without any moral offence, and therefore without any compunction, transgress. If all our laws were founded and enforced on the same principle, we should be living under a military government, we should be in a state of servitude. Fortunately our game laws are the exception, for though it might be difficult, and even impossible, to prove that many of our laws are founded on natural justice, yet all, save the game laws, it is believed, are founded on some right of property, the result of custom, or conferred by the Legislature.

The first question under the foregoing circumstances is, whether so long as there is no property in game recognised by law, it is jurisprudentially right, to have penal or any laws restricting the pursuit and capture of it? To this the answer must be in the negative. No wrong, for example, is done by a person taking possession of land which belongs to nobody,* and so long as he occupies the land of which he has so taken possession, it is his,† and provided he only manures the land it becomes his property.‡

The same principles apply to movable property;§ possession being *prima facie* evidence of ownership; and if, without any contract, labour be lawfully bestowed on movable property, so as to give it an unalterably new character or condition, that makes possession indisputable evidence of the ownership of it; for example, if wine be lawfully made with grapes by one of two persons to whom the grapes belonged, the wine is the property of him who makes it.¶ Here, it may be asked, how game in a cultivated country is sustained? Can it be alleged truly that it is sustained on food produced by nature unaided by man? Certainly not; for if the

* Puffendorf, Book IV., c. 4, p. 387.

† Siderfin, 347.

‡ Siderfin, 347.

§ Grotius, Book II., c. 3, sec. 3.

¶ Just. Inst., Lib. II., tit. 1, s. 25.

ground were not cultivated there would be comparatively no game. Cultivated land consists of arable, pasture, and meadow, each having been made artificially productive by an expenditure of capital, and each requiring a due course of husbandry. Game found on all farmed land, therefore, is propagated from, and exists on, the produce of capital—of capital expended under the sanction of the State. This being so, it is jurisprudentially wrong not to create a property in game on land so cultivated.

As regards, therefore, all indigenous *graminivorous* and *granivorous* animals, both winged and four-footed, throughout the cultivated parts of the United Kingdom, the law ought, so far as is possible, to give them to the producer of the food on which they live. Who is that producer, will be presently considered. Such a right of property might easily be created, and would be thoroughly intelligible, and easily made operative, if founded upon the maxim "*cujus est solum ejus est usque ad cælum*," the proprietor having liberty to follow off his own soil, but for capture only, game wounded in the exercise of his proprietary right. As regards birds migratory over the sea, in so far as they are sustained on produce the result of capital, the same law of property should exist—therefore quails and landrails, and it may be some other birds, ought to be classed with the indigenous grain-consuming birds before referred to. As regards fish in confinement they ought to be by law, the same private property as is a bird in a cage. As regards birds not sustained on produce the result of capital, it is impossible, on any jurisprudential principle, to confer a property in them, and if, therefore, the natural right to pursue and capture them be restricted the restriction must be founded on a different principle. The principle is contained in the maxim "*Sic utere tuo ut alienum non lædas*." This is a moral obligation which the Legislature has a right to enforce, and which ought to be enforced whenever necessary. This principle is recognized by the Civil Law, for, whilst that law gives no property in wild animals, it recog-

nizes a right in the cultivator of the soil to prevent the pursuit of them over cultivated land. *Plane qui in alienum fundum ingreditur venandi aut aucupandi gratiâ potest a domino si is providerit prohiberi ne ingrediatur.**

The Legislature should, therefore, forthwith create a right of property in the animals enumerated in Class 1, by declaring the unlawful pursuit and capture of them a felonious offence, and the unlawful pursuit of them a criminal trespass, that is, a trespass with intent to acquire another person's property; but as regards the animals enumerated in Class 2, the unlawful pursuit of them should be punishable as a trespass only.

As regards *feræ naturæ* on land that has never been cultivated, (but on which they have been saved from extirpation by the laws at present in operation), that is, on wild land, such as moors and forests, there is more difficulty in arriving at any just law to restrain the natural right to pursue and capture them. Here the law of expediency, that is, purely arbitrary law, meets the jurist; but it by no means follows that such law ought not to exist; for all law that interferes with natural rights is founded on a restraint of natural liberty.† Our land laws, for example, are laws of custom, and it would be impracticable to found territorial property on any other principle without recognising allodial titles, the operation of which in a very few generations would cause a division of the land *per capita*. This would not only destroy the progressive principles of government on which our constitution is founded, but would infect it with retrogression. A greater national calamity than a minute division of the soil could hardly happen. At present the exclusive property in wild and other land is derived directly or indirectly from the sovereign, who never has abandoned his right to the allegiance and duty owing to him as incident to the tenure of it. There is, therefore, no absolute and unqualified title to land, known to our laws,—no allodial

* Just. Inst., Lib. II., tit. 1, s. 12.

† See Puffendorf, Book II., c. 2, s. 5.

tenure. Hence, many persons are from Crown grants entitled to the exclusive enjoyment of wild land, without any labour or capital ever having been expended upon it, and those rights have been unquestioned and transmitted for many generations. It must, however, be admitted on jurisprudential principles, that those exclusive rights ought never to have existed, and that the maintenance of them can be justified only on the arbitrary principle of expediency. Ought they therefore to be abolished? The answer must be, certainly not. First, because it must be presumed that they have been lawfully obtained, that is, with the sanction of the State; and secondly, because the State would lose great advantages by the abolition of them. If, however, that exclusive title, which is founded essentially on what is wrong, can be modified without injury to the proprietor and without damage to the State, the Legislature ought forthwith to interfere. It being a great national advantage to be supplied with food from the *graminivorous* and *ericavorous* animals found only on wild land, it is lawful to preserve them from extirpation, and as the preservation of them for the national benefit can be effected, in no practicable way, except by conferring an exclusive private right to pursue and capture them, it follows that it is expedient and therefore proper to confer such a right, and to protect the enjoyment of it; but, beyond all question, that exclusive right should not be protected by any unnecessary laws. The State ought therefore to authorise the public to enjoy the natural right, except during the breeding season, of taking air and exercise over wild and forest land.

As to fish in the estuaries of rivers, it may be remarked that as no national damage can arise from an indiscriminate right to take them, there is no necessity to restrict that right,* but as regards shell fish in artificially-constructed

* An estuary is a widening of the mouth of a river into an arm of the sea. See Worcester's A. D., word "Estuary." If it be in any estuary, probable entirely to intercept and capture *fluvio-marine* fish, the law should interfere to protect the fluvial proprietors.

beds and fish in rivers above estuaries, each should be protected as before mentioned. The difficulty of enacting a law for the preservation of game founded on property, arises not from the nature of the subject, but from the vexed question who is the producer of the food on which game is sustained, a question which could never arise if the soil were vested in a single proprietor. But wherever land capable of cultivation is limited in extent, and people are increasing in number, and are for a maintenance engaged in other pursuits than the cultivation of land, it is impossible to confine the ownership of land to a single proprietor. The relation of landlord and tenant, or some analogous relation, therefore always ultimately arises where land capable of cultivation is limited in extent, and a resident population is increasing in numbers. This limitation may be natural or arbitrary. In all islands it is natural, but wherever wild land capable of cultivation is, by being vested in an exclusive proprietor, restricted from cultivation, whether in an island or elsewhere, the limitation is arbitrary. The relation of landlord and tenant cultivator in England originally arose from the latter cause; a right to occupy and cultivate land in a wild state being obtainable only from a superior proprietor, who would make his own terms—one of which was to limit the proprietary right of the cultivator to the use of the soil for purposes of husbandry. The rights of the chase were thus monopolised by a single class for many generations, the Legislature defining what persons should be entitled to them. A right to hunt in public with hounds was never in any way restricted, but with that exception, the persons entitled to pursue and kill game were few in number, and belonged to a favoured grade of society. In the year 1831, that principle of favouritism was abandoned, and a right to kill game was given to every one willing to pay a tax, but as the right was rendered incapable of being exercised lawfully without the consent of the landlord,* the effect of the law has been,

* 1 & 2 Will. IV., c. 32, ss. 6 & 7.

and at present is, that game in the absence of any agreement to the contrary cannot be lawfully pursued except by the landlord or with his consent; in other words, the exclusive right to kill game is vested practically in the landlord. This has, recently, in very many instances given rise to a condition of things, not contemplated by the parties when the relation of landlord and tenant first arose. It was always, until recently, understood that the landlord should, did he so choose, be personally in the exclusive right to kill the game and to preserve it, but it was not contemplated that he should assign that right to a stranger, a person standing in a very different relation to the tenant, one between whom and the tenant there could exist no mutual obligations, as regards the payment of rent, the maintenance of farm buildings and the cultivation and management of the land; and who, unlike the landlord, has no interest in keeping down the game sufficiently to enable the tenant to produce sufficient stock and grain to pay his rent. Of late years the privilege of shooting, from its scarcity and the pleasure it affords, has become valuable, representing a considerable marketable price, and many landlords have availed themselves of their exclusive right to kill game by transferring it to others for a pecuniary consideration, thus receiving two rents, one from the tenant, the other from the assignee of the game, the latter being in truth paid by the tenant in addition to his other rent. A more grievous injury to the tenant, a greater practical injustice, cannot well be imagined. It is morally utterly unjustifiable.

It is not surprising, therefore, that great discontent and even indignation should exist amongst the tenant cultivators of land, where game is excessively preserved. It is true the landlord may allege that he might, himself, had he chosen so to do, have preserved the game in the same quantity; and so he might, but had he done so and had then let the game, he could not have taken, without grievous injustice, the same amount of rent, as if the game were preserved

for his own *personal* enjoyment. Now, beyond all doubt, the landlord and the tenant of cultivated land are both producers, except, in the single instance, of a tenant at his own exclusive expense bringing wild land into cultivation. It may be, it is believed, truthfully alleged, that the expenditure of the landlord on land before it is adapted for cultivation by an occupying tenant, is necessarily full threefold more than that of the tenant, assuming that the landlord provides and keeps in repair the farmhouse and buildings, drains and breaks up the soil, and makes the inclosures. There was, therefore, no absolutely unjust principle brought into operation when s. 7 of 1 & 2 William IV. was enacted, which (except in cases where the right of killing game had been expressly granted or allowed, and except where upon the original granting or renewing of any lease or agreement a fine or fines had been taken, and where the lease was for a term exceeding twenty-one years,) gave the landlords the exclusive right of entering, or authorising another to enter, on land for the purpose of killing or taking game; on the contrary the landlord had far more right to the game than the tenant. The injustice has arisen from the abuse of that statutory privilege.

If the sole object of legislation be to produce the largest quantity of human food, those laws would be the best that, in their result, caused the land to produce and sustain the largest quantity of grain and food producing animals; but game is food, and is therefore *primâ facie* rightfully under the protection of the law. To justify the utter extirpation of game, for the sake of producing other edible animals, it must be proved that, when brought to market, game has consumed of food or destroyed, or both consumed and destroyed of food a larger quantity in proportion to its saleable weight than other stock. This is incapable of proof. The question was fully gone into before the Select Committee of the House of Commons on the Game Laws in 1845 and 1846, and the evidence upon the question is in the very highest degree

uncertain and unsatisfactory. Two witnesses say 2 hares,* another, 3,† another, 4 or 5,‡ another, 1,§ another, 6,|| another, 4,¶ another, 55,** another, 50,†† another, 16,‡‡ another, 20,§§ another, 40 ||| hares consume as much as a sheep. The truth is that every animal consumes food in quantity, the same, that is in proportion, to its size and weight. Six pounds weight of hare is, therefore, brought to market at the same cost of production as six pounds of beef or mutton, except so far as the hare has prevented the growth of food by its habits, or by its having had a longer existence than is permitted to animals fattened for market. Hares and rabbits may exist longer than domesticated animals. It is believed that they rarely do, but where they have access to corn crops they, by biting off corn in the blade, to a certain extent destroy without any corresponding advantage cereal produce. The urine of the rabbit is also destructive or pernicious. There are evils inseparable from the preservation of hares and rabbits; ought they, therefore, to be extirpated? Would their extirpation be a national advantage? As regards winged game, for about ten days or less in the year, that is to say, so soon as corn crops are ready for the sickle, that is, so soon as the grain will separate from the ear, winged game in common with other granivorous birds attack standing corn; but they do not destroy corn in the blade. Ought pheasants and partridges, therefore, to be extirpated? Here considerations of State become the ally of the game preserver, for there is a principle of government equally important as that of the mere sustenance of human life, a principle which has been always in operation, and that is, the maintenance of national power. War has destroyed far more lives than famine. Are we to disband our army and cease to maintain our navy, because lives may be lost in war? Are we

* Bates, 43, 45, 157. Gayford, 8676. † Bell, 4007, 4000. ‡ Skittler, 5722. § Morris, 10,260. || Gayford, 8926. ¶ Hobson, 11,864. ** Houghton, 1634, &c. †† Hon. G. F. Berkeley, 15, 475. ‡‡ Brierley (1846), 2387. §§ Hooper (1846), 3277. ||| Earl of Malmsbury (1846), 4720.

to abolish all game laws and permit all wild animals to be extirpated, because game may to a certain extent prevent the largest quantity of human food reaching the market, a quantity incapable of being appreciated? Political economy also here becomes the ally of the game preserver, for it can be proved that the growth of human food in the form of game causes capital to be largely employed in productive industry, and its expenditure to be distributed throughout the provinces,—a national good by no means unworthy of the attention of the statesman. It is, therefore, a serious question whether, were game extirpated, the country would be more prosperous.

It is not the first duty of a State to produce in the largest quantities human food, but to maintain the institutions which tend by moral restraint to prevent population increasing beyond its means of subsistence; that is, institutions which encourage forethought and morality—in other words, progressive civilisation. In this point of view it is right and necessary to have laws for the preservation of game, because the social operation of them is nationally beneficial. Field sports induce very many of the more highly educated classes to visit and remain for a considerable time every year in the provinces, where they expend capital in the encouragement of provincial art, and in promoting provincial industry, and where by field sports they are able, not only to occupy agreeably that leisure which has been hardly earned, but to restore, and keep unimpaired, that strength of mind, and those intellectual qualifications, which it is essential for the national welfare some portion of society should always possess. Doubtless the preservation of game to some extent leads to crime, but those who contend there ought to be no game laws, must prove that were game extirpated there would be less crime. Upon this question, the sentiments of ministers of religion, and dwellers in towns, ought not to set up against those of dwellers in the country, many of them inhabitants of isolated homesteads, especially exposed to the invasion of the criminal classes. If landlords and tenant farmers be

consulted, whatever difference of opinion may be entertained as to who should be entitled to the game, they would be unanimous, or nearly so, as to the expediency of having it protected, especially by night, by a rural police, and the fact that poaching may be the beginning of a criminal career, and that murderous fights occasionally are caused by the preservation of game, ought not to be allowed to be set up against the right to have the property of farmers and others resident in unprotected homesteads protected effectually. In this respect, the night poaching Act has been most beneficial,* and it would be improper to repeal it.

The conclusion then derived from the foregoing observations appears to be that jurisprudentially it is right and expedient to enact and maintain game laws, but that those at present in existence ought to be amended, by founding them in part on the principle of property, viz., by declaring that all animals in Class 1, before mentioned, whilst on or over cultivated land, should be the private property of the proprietor, and that the unlawful pursuit of such animals should be a penal trespass, and the unlawful capture of them a criminal offence; and as regards all the animals enumerated in Class 2, that the unlawful pursuit of them should be protected by a law of trespass, and as regards all the animals enumerated in Class 3, that the preservation of them should be secured by making it a penal offence unlawfully to pursue them, especially during the breeding season, but they should not be preserved under the principle of a trespass, because no capital has been expended on the land where they are found.

As regards the private sale of game, notwithstanding the importance of the subject, it is not a question of a jurisprudential nature. The only remaining question is in whom the property, proposed to be created in game, should be vested, with reference to which it may be observed that the first principle should be to leave co-partners on the soil to enter into any contract they please; secondly, that in the

* 26 & 27 Vict., c. 114.

absence of any agreement to the contrary, the property in game ought to belong to the person or persons by whose labour and capital it is sustained. Upon this principle, if any exclusive property is to be created, it should, if there be a plurality of persons whose capital is so expended, be vested in them in proportional shares, as far as is practicable. Here a difficulty of very considerable magnitude arises, which can only be reduced into law by a compromise. Bearing in mind that, as the law is at present, the tenant occupier contracts only for the use of the soil for farming purposes, his landlord being entitled, as against him and every other person, to kill and preserve the game upon it, if the law of contract be strictly regarded, the law ought to vest the game in such cases exclusively in the landlord; but as the effect of that would be to enable the landlord to get, as already demonstrated, two rents from the land at the expense of his tenant, it would seem to be a fair compromise and highly expedient, if the tenant had vested in him the property of all wild graminivorous animals, the property in all granivorous game being vested in the landlord. The result would be that hares and rabbits would be the property of the tenant cultivator; pheasants, partridges, quails, and landrails the property of the landlord; and as regards the killing of larks, woodcocks, snipe, wild-fowl, &c., the right to pursue and kill them might be left to the law of contract.

It should be finally remarked that a law of trespass would be utterly nugatory for the preservation of wild animals. A law of trespass confers a right of action only, and most of those who would be engaged in the unlawful pursuit of game would be unable to pay the legal expenses of an action. A law of arrest, especially by night, is, therefore, essential for the preservation of game. Where it is, notwithstanding its migrations from farm to farm, in truth and in fact sustained on the same food as live stock fattened for market, the law ought to afford the same protection, as far as is possible, to

those at whose expense game is in existence ; but there is an unreasonable demand for the abolition of all game laws ; let this demand be met by placing before the public the simple principles of natural justice. Natural justice requires that they who, by the expenditure of capital, produce a marketable article would participate in the profits. Let, then, in cases where there is no agreement to the contrary, the ground or graminivorous animals be declared by law to be the property of the tenant, the winged game the property of the landlord. Should this just and reasonable principle not soon be acted upon, it may be that there will be soon no game laws at all. Matters of trespass and police, with a view to any enactments concerning them, are not considered on the present occasion, they not being strictly jurisprudential subjects. It is sufficient to observe with regard to them, that in every highly civilized and well-governed State, there is no difficulty in framing laws for the protection of rights created by its Legislature, and if and when necessary in enforcing the observance of them.

ART. II.—EARLY ENGLISH CODES.

(1.) THE MIRROR ; (2.) LEGES HENRICI I.

IT is proposed to discuss in the following article, the authenticity and the worth of certain ancient legal treatises, which have lately been cited as of great authority, and emphatically vouched to contain much trustworthy information, both as to the history of this country in remote times, and as to the sources of our Common Law.

Somewhat encrusted—over much perhaps—*rubigine vetustatis*, such treatises have nothing about them attractive

to the general reader, and but little that is useful even to the professional student, and yet, in the history of the development of our liberties, they may have an infinite importance as links in the long chain of our national records, as ancient title deeds of our present freedom, which may at least merit an occasional reference, and justify an endeavour to awaken a passing interest in the genuine, and to point out and displace the worthless.

It can hardly be rash to affirm that a critical examination of the early law books and judicial records, with a design to eliminate

. . . *il troppo ed il vano*,

should be the first object of the codifier, and that to set about re-arranging the practice and the functions of the judiciary, before we have obtained the scheme of the future Code—which is the plan adopted by our highest legal officer—is very like beginning at the wrong end. But be this view right or wrong, it cannot but be necessary to the compilation of a reasonably satisfactory Digest to ascertain what are, and what are not, the pure sources of the law. With these observations we will proceed to discuss the treatises referred to, taking them in the order of their popularity.

The Mirror appears to stand first on the list. It received from Lord Coke (see preface to the 9th and 10th Reports) the most emphatic commendation, and it has recently been highly eulogised and abundantly cited by Mr. Finlason in his new edition of “Reeves’ History of the Law,” and described by him as a work “more illustrative of our whole legal history for the period from the Saxon monarchy to the Great Charter than any other work extant.”* We may add that it was also cited in the recent case of *Tatton v. Darke* (5 H. & N., 647), and relied upon by the Court, the late Lord Chief Baron Pollock having been reported as saying that it was written in the time of King Alfred (see 29 Law Jour. Exch., p. 271).

* Reeves’ Hist. C. L., Vol. I., note to preface.

Unfortunately, the *Mirror* is one of the most questionable authorities extant, as we shall show. Meanwhile, a word as to Lord Coke's commendation. It must be remembered that in his time philosophical criticism, of either law, or history, or scientific writings, was practically unknown, and an almost blind reliance on precedent, (which even Lord Coke himself reprobates,*) was the confirmed habit of both Bar and Bench. Whether these precedents were genuine or not was rarely, if ever, considered; it sufficed that they were, or purported to be, ancient, and supported the opinions of the person citing them. Some curious instances of Lord Coke's lack of critical judgment will be seen by referring to the citations in the note below, and, we are afraid we must say, of his occasional recklessness in the use of records for the purpose of supporting his statements.† We ought nevertheless to add, *quoad* the references to certain of his works, that they were posthumous publications.

We shall now give some account of this ancient treatise.

The *Mirror* is what may be called an ambitious work, professing to be a *Summa* or abridgment of English law from the days of King Arthur to those of Edward I., and such as Vacarius and some of the most distinguished of the doctors of Bologna had previously compiled with reference to the civil law. It affects to give circumstantial accounts of particular ordinances and judgments of King Alfred (Mr. Finlason says that it contains his long-lost *Dom-boc*), it attributes to this monarch the institution of trial by jury, and narrates in chronicle-like style a strange story of his hanging forty-four judges, and many other curious facts which are not mentioned or referred to in the life of King Alfred by his cotemporary, Asser, or in any record of a trustworthy character. It further acquaints us with some details concerning the independence of the clergy of control by the secular

* Preface, 10 Rep., xxi.

† Co. Litt., 68, b., extract from Leg. Ed. Conf. *Selden*, tit. Hon., part 2, cap. 5, s. 26. Preface to 3 Rep. Per *Anderson*, C. J., 2 Sid. 200 per *Cur. Cam. Scacc.*, Kel, 21; per *Prynn*, Brev. Part., Pref., 4 part.

courts in the time of King Edward I., which are not narrated by other writers; and, *inter alia*, it tells us that the ancient and accustomed punishment for *heresy* was burning, as to which again there is no independent proof whatever.

This remarkable work appears to have remained neglected and unknown to the profession until the apparent discovery of a MS. of it by Lord Coke after the publication of the 8th Reports, for no mention is made of it by him in his elaborate prefaces to the third and eighth volumes, wherein he enumerates the various legal authors of high repute. In his preface to the 9th Reports he commences by alluding to it as "a very ancient manuscript in my possession."

It was first printed in 1642 from "an old MS. belonging to Francis Tate, Esq.," collated with another in the possession of Corpus Christi College, Cambridge. Notwithstanding its distinguished introduction to the legal world, it seems to have excited immediate suspicion. Fulbeck,* for example, never mentions it in his well known "Study of the Law."

Of the next generation of lawyers and law writers, Lord Hale, as illustrious an antiquary as a lawyer, makes no use of it either in his "History of the Law," or in his more critical work on the "Pleas of the Crown," and this is the more remarkable, considering his evident conviction that to the Anglo-Saxons we owe the greater part of the elements of the law. There are some omissions, which appear to us manifestly intentional: see Hale, Pl. Cr., c. 11, and c. 30; compare Mirror, c. I., s. 4, and c. IV., s. 14.

After Lord Hale's time, the Mirror received some attention and examination from the celebrated Dr. Hicks, perhaps the most learned Anglo-Saxon scholar of his day, and any one who will take the trouble to refer to his laborious investigation of the truth of one of the statements in the Mirror,

* A cotemporary of Lord Coke's. The preface to 9 Rep. was written about 1612, Fulbeck's Study of the Law about 1620: Bridgman, Leg. Bibl. Sir Thomas Egerton and Lord Eldon both held a high opinion of this work by Fulbeck.

which is to be found at p. 42 of his "Dissertatio Epistolaris," will feel but little surprised at his calling Horne, in one passage, *falsarius aliquis Horno*, and, in another, at his speaking of the work attributed to him as *quo nihil mendacius*; or if the trouble should be too great, we venture to say that a moderate acquaintance with Anglo-Saxon names, and a cursory reference to and comparison of the semi-Frankish concoctions in the Mirror, will enable any intelligent person to see why Dr. Hicks used such strong language.

An analysis of this composition leads us to attribute it not to Horne but to some unknown lawyer, long posterior to the reign of Edward II. The elaboration of the reasons for this opinion would occupy too much of the space of this review, but we may mention one little bit of internal evidence which is very cogent. It will be seen that among the causes assigned, in Chapter III., section 6, for *exception* to the jurisdiction, is the following:—"That the writ is written on PAPER [Fr. *papier*], or parchment, which is prohibited." Now paper, in the reign of Edward II., was an *article de luxe*, entirely of foreign manufacture, and, with the exception of a very few royal letters and documents, most, if not all, of which were written abroad, was unknown in England; but there are extant writs to the sheriffs of the reign of Richard II. written upon paper, and enrolled among the public records, which are believed to be the first official employment of this material, and we do not find any authority before the time of Lord Coke* for the statement that paper was prohibited in legal proceedings.

We will now turn to the *Leges Henrici I.* These will be found printed in the Record Edition of "Ancient Laws and Institutes of England," which was published in 1840. They are taken from the Red Book of the Exchequer, which is unquestionably of great antiquity, and has often been "admitted in the Court of Exchequer as evidence for certain

* See Co. Litt., 260 a. 2 Roll. Ab., 21. Note also that paper is spelt, not *papier*, but *papire*, in 4 P.R., p. 176: *temp.* 1 Hen. VI.

purposes."* These laws, somewhat like the Mirror, profess to be a code for the entire kingdom, and they are divided into paragraphs and subsections in a most systematic way.

Lord Hale frequently refers to them; Mr. Hallam† attributes them to a compiler in the reign of Stephen, and has made many citations from them; and lastly in the new edition of "Reeves's History," already mentioned, we find them repeatedly and largely quoted, and Mr. Reeves taken severely to task for omitting to make use of them.

Now what are these *laws*? We must first separate the Charta of Henry I. from the laws. The Charta probably is genuine, being found in the Textus Roffensis, which, it is generally agreed, was written between 1115 and 1125; but the laws, of which the only copy of so early a date as the reign of Henry III. is in the Red Book of the Exchequer, are not in the Textus Roffensis. They commence with a paragraph headed *De Causarum Proprietatibus*.

One thing we think is clear, namely, that it is impossible to assign an earlier date to them than the reign of Henry II.; for, first, the "Decretum of Gratian," (not published in Italy until 1151,) is mentioned in this treatise, which sufficiently shows that the work was not compiled under Henry I., and taking into consideration this date so established, and the disturbed state of the country under Stephen, we may safely conclude that this compilation was not effected under *that* king; secondly, it is the opinion of a great scholar and painstaking critic, Mr. Sumner, for which he cites authorities, that this code could not have been constructed until the eighteenth year of Henry II.; this opinion is founded upon the internal evidence of the document.

For our own part we consider that it was not compiled until after the eighteenth year of *Henry III.*, for the following reasons;—according to Mr. Madox's statement (founded on much careful research), in the "Dissertatio Epistolaris,"

* 2 Hallam, Mid. Ages. Note xi., p. 413, 11th edition.

† 2 Hallam, *ibid.*, 337 & 386.

printed at the end of his "History of the Exchequer," the Red Book was compiled by one Alexander de Swereford, a canon of St. Paul's, and he, it is shown by Mr. Foss, was not appointed until 18 Hen. III. to the charge of the records of the Exchequer.* This fact, taken in conjunction with what we may infer from several passages in the *Leges*, quite inconsistent with the constitutions of Clarendon, but not at variance with the subsequent claims and usurped rights of the clergy in the reign of Henry III., tends to place the date of this collection of laws about the year 1230,† that is to say, one century after their commonly ascribed date.

In aid of the above surmise, we add the following extract from Bracton, who probably commenced his voluminous commentary about 1230:—

"Fere in omnibus regionibus utantur legibus et jure scripto, sola Anglia usa est ut in suis finibus jure *non scripto* et consuetudine."

It being impossible to ascertain what were the materials of which the author availed himself, we must trust to analysis for the purpose of ascertaining the worth of his compilation. The first thing that we feel struck with is the horribly bad Latin of the text; next, the use of the first person singular in some of the sentences in a tone of apology (see cap. 8, *ad fin.*) for not having set forth "the laws of King *Edward the Confessor* in a more complete manner, as they merited," to which succeeds the expression of the hope that "these *capitula* have taught something worthy of attention to *our profession, sive jure naturali, vel legali, vel morali*," although, "as is admitted, in the various parts of the work, a great many laws have been omitted." (!) And there are other places, *ex. gr.*, cap. 5, s. 31, where the pronoun *tu* is used, and cap. 6 (unfortunately almost altogether unintelligible), where the confused state of the laws is in equally confused language

* See "Foss's Judges," *Alexander de Swereford*.

† This is, in fact, the date given by Swereford himself in his preface to the Red Book.

inveighed against, from which it is manifest that the compiler considered himself rather a commentator than a codifier. And lastly, when we examine the *substance* of this singular composition, we find it made up of citations from St. Augustine, from St. Jerome, from the *Leges Salicæ*, from the *Leges Longobardorum*, from the *Leges Wiſi-gothorum*, from the Theodosian Code, from the Frank Capitularies, and from the canon law, as well as from what are supposed to be Saxon laws.

Under these circumstances we feel inclined to disbelieve in these laws as "historic verities," and to agree with what seem to have been Lord Hale's second thoughts,* that they are "but disorderly, confused, and general things, rather the cases and shells of directing the way of administration, than institutes of law." At the same time we cannot regard them as valueless, nor can we hold them to be a mere literary figment of the time in which they seem to have been written, for they bear important evidence of the desire of the compiler to recover the wreck of the old Saxon laws, and put upon record some memoranda of the institutions which seemed fast giving place to the great, new, and overwhelming feudal system of the Norman kings, and to struggle against the introduction of its concomitants, foreign law, and the influence of Italian ecclesiastics: such we know, from the passage from the "*Opus Majus*" of Roger Bacon, so often quoted, was the earnest desire of many an English monk and scholar; and if the record be imperfect, we may attribute it to a prior and contemptuous obliteration and intentional neglect in the Norman Exchequer of the memorials of a past that was dear to the Anglo-Saxon.

It has recently been conjectured by a German writer on Anglo-Saxon law, that these laws ascribed to Henry I. may have been copied from an old Latin version then extant; but we think not. The internal evidence of this most miscellaneous composition,—certain expressions in it which indicate

* Hist. C.L., p. 137.. 4th edition.

oral sources of information,* the frequent reiterations and contradictions,—the silence of Alexander de Swereford, in his preface, on this subject, are altogether against such a supposition. The probability is rather that Swereford gathered from various sources an undigested mass of information about the laws and customs of ancient times, which he felt to be both fragmentary and discordant with Norman ideas of government,† and which he patriotically endeavoured to rescue from impending oblivion, by giving it the form and appearance of a code, with the aid of abundant interpolations from codes and capitularies.

The result is, that we have before us an inextricable medley which cannot represent the true state of the law in the time of the first Henry, giving us no really useful information about the ancient provincial customs which governed the rights and privileges of the ancient Anglo-Saxon communities and their members *inter se*, and in relation to the king, which customs form the very groundwork whereupon our Common Law is based.

ART. III.—THE LATE SIR FREDERICK POLLOCK.

THE career of some men who have eventually attained eminence, has been distinguished and rendered interesting by the vicissitudes of their course, and the many and varied obstacles which they had to overcome ere reaching the goal at which it was their steadfast aim through life ultimately to arrive. The career of the subject of the present memoir was distinguished, if we may so term it, by the singular and unvaried prosperity with which he met through life. At school, at College, at the Bar, and on the Bench, one

* See cap. 8, *ad fin.*; cap. 76, and cap. 90, s. 11.

† See particularly cap. 9, s. 9.

uniform success attended him. It was his further good fortune, the consummation of a successful career, to live respected and beloved by all who knew him. Even envy, which seldom fails to raise up enemies to those who excel other aspirants in the same race, was wanting in this instance; and not a man was to be found who would have desired to do an injury to the late Sir Frederick Pollock.

To commence with his very earliest career, the late Sir Frederick Pollock was born at his father's house in the neighbourhood of Charing Cross, in the parish of St. Martin's-in-the-Fields, on the 23rd of September, 1783. His father, Mr. David Pollock, who was a native of Scotland, kept a saddler's shop, and was very successful in business, not only securing royal patronage as a tradesman, but what is considerably more important, deriving large emolument from his calling, so that he was able to give to each of his sons a finished education; he was besides a man of great integrity, and was universally respected. His wife was Miss Sarah Parsons, who, we are told, was a person of remarkable energy and force of character. By her he had a family, and three of their sons attained high eminence in their respective professions. The eldest of them was the late Sir David Pollock, Chief Justice of Bombay. Another was Field-Marshal Sir George Pollock, the hero of the Khyber Pass and of Cabul. The second son of Mr. Pollock was the subject of the present memoir.

Frederick Pollock, before being sent to a public school, was placed under private tuition, but at the age of 15 or 16 he was entered at St. Paul's School, of which the Rev. Dr. Roberts was at that time the high master. This school has been eminently successful as regards its production not only of scholars, but of men who have distinguished themselves in after life. Thomas Wilde, afterwards successively Chief Justice of the Common Pleas and Lord Chancellor Truro, was, we believe, a contemporary of Frederick Pollock at St. Paul's, and we know that he maintained an intimacy with

him through life. The late Bishop of Manchester, Dr. Prince Lee, and the present Bishop of Llandaff, Dr. Ollivant, both men highly distinguished for their scholastic acquirements, were also educated at St. Paul's School, under its late admirable and worthy high master, Dr. John Sleath, who delighted to greet the appearance, at the annual apposition, of Mr. Frederick Pollock, Q.C., M.P., then a very rising barrister, destined eventually to secure high promotion, as we have heard the learned doctor himself predict. At school young Pollock was distinguished above his contemporaries both in classics and mathematics. In 1802 he entered at Trinity College, Cambridge, where he brought with him a high reputation from St. Paul's, but which he not only fully maintained but increased. He not merely came out first in every successive college examination, but in 1806 he closed a very brilliant under-graduate career by going out as senior wrangler and first Smith's prizeman. The following incident connected with the exhibition of the degree-list was related by the late Sir F. Pollock, and is given in nearly his own words.

"I was very anxious as to my place in the list, and, at the same time, rather confident. Perhaps my confidence bordered on presumption; if so, it was deservedly punished. As soon as I caught sight of the list hanging in the Senate House, I raised my eye to its topmost name. That name was not mine. I confess that I felt the chill of disappointment; the second name was not my name, nor yet the third, nor yet the fourth; my disappointment was great. When I read the fifth name, I said, 'I am sure I beat that man.' I again looked at the top of the list; the nail had been driven through my name, and I was 'Senior Wrangler.'"

In 1805 Mr. Pollock was elected to a Fellowship of Trinity, and subsequently took his degree as M.A. He afterwards entered as a student at the Middle Temple, and was called to the Bar in Michaelmas Term, 1807, one year before his great rival on the Northern Circuit, Henry, afterwards Lord Brougham. He became constant in his attendance in Westminster Hall, where his abilities and industry were at

once appreciated, and he soon rose into practice. Before he had been quite three years at the Bar, his reputation was widely extended by his conduct of the case of Admiral Blake, on the trial of Colonel Arthur, charged before a court-martial with implication in a rebellion against the admiral while Governor of New South Wales. In the summer of 1810 Mr. Pollock joined the Northern Circuit, which Mr. Brougham had already done; but this year he went no farther than York. In the summer of 1811 he went all round. He does not, however, seem to have met with any great encouragement there, as he did not again go the circuit until 1815, and then only to York. But he went all round the circuit in the spring of 1816, and continued to do so regularly from that time. Mr. Brougham was then in good practice on the circuit, as were also Mr., afterwards Sir James, Scarlett, and Mr. Serjeant, subsequently Baron, Hullock.

Mr. Pollock's practice both in Westminster Hall and on the circuit continued to increase, and early in 1827 he was appointed one of His Majesty's Counsel, in conjunction with Mr. John, afterwards Lord, Campbell, and Mr. John Williams, subsequently one of the judges of the Court of Queen's Bench. Mr. Brougham had received his silk gown about a week previously. Mr. Scarlett, who had been for some time the leader of the Northern Circuit, quitted it in 1827, in consequence of which, not only was a large amount of business thrown into the hands of his late colleagues there, but a keen contest for the lead at once commenced. In point of seniority Mr. Brougham was entitled to this honour; but in point of actual practice Mr. Pollock might claim the distinction. He was much employed in great mercantile cases, both on the circuit and in London, especially at Guildhall, where interests of considerable magnitude were involved. And masterly was the manner in which he grasped the details and applied the law in trials of this description. While Mr. Brougham continued on the circuit, which he quitted for the woolsack in Michaelmas Term, 1830, the forensic contests between him and

Mr. Pollock were frequent and severe. We have it, however, in the words of the late Chief Baron, contained in a letter to the writer of the present memoir, that vehement as those encounters were, they were always conducted in that spirit and manner which are becoming, and we may doubtless add generally characteristic of, high-minded British advocates.

“It is very creditable to Brougham (and I may claim some share in the credit), that during the whole time we were opposed to each other, not one syllable of disrespectful language ever dropped from either of us to the other, nothing that either could wish unsaid; and his conduct on the woolsack was as kind and friendly as possible.”

The able writer of the memoir of Sir Frederick Pollock, which appeared in the *Times* shortly after his death, remarked of him with great justice, that:—

“His success was owing not so much to any showy qualities or attractive powers as a speaker, for these he never possessed, as to the extraordinary reputation for industry and general ability which had followed him from Cambridge to London, and from London to the great cities of the north, supported and confirmed as it was by the accurate and extensive legal knowledge which he displayed on every occasion on which his services were called for. Hence he had many clients from the very outset, and never knew what it was to sit waiting for a brief. His business in the courts of Westminster, always select and lucrative, grew more and more extensive, and after a successful practice of some twenty years he obtained the well-earned dignity of a silk gown, being made a King’s Counsel in 1827. From this time forward his progress was still more rapid than before; for many years he engrossed the leading business of his circuit, and found himself retained in nearly every cause of importance. ‘Attorneys and suitors,’ says one who knew him well at this period, ‘alike thought themselves safe when they had secured his services, and not unfrequently were left lamenting when they were told that their adversaries had forestalled them.’”

During the year 1830, on a vacancy occurring among the judges of the Court of Common Pleas, Lord Lyndhurst, who

was then Lord Chancellor, sent for Mr. Pollock, and offered to appoint him to the vacancy, which he, however, declined. The Chancellor then asked Mr. Pollock if he thought that Mr. Alderson would like the appointment, and authorised him to offer it to him; on which he at once went to Mr. Alderson's house, and sent him back to the Chancellor in his, Mr. Pollock's, carriage, when Mr. Alderson forthwith accepted the office, but was afterwards transferred to the Exchequer by Lord Brougham. The above narrative we had from the late Sir F. Pollock, and give it nearly in his own words.

Like most successful men at the Bar, Mr. Pollock was desirous of obtaining a seat in Parliament, and accordingly became a candidate in the Conservative interest for the borough of Huntingdon at the general election in 1831, where he was elected, and by which constituency he was again returned in 1833. He was not, however, so successful as a debater in Parliament as he was as an advocate at the Bar, which may be partly accounted for by his time and attention and energies being so entirely engrossed by his extensive practice at the Bar, and partly by the circumstance that he was nearly fifty years old before he obtained a seat in Parliament. He possessed, however, considerable influence there, to which his high character, commanding talents, and gentlemanly manners, alike contributed. But as an orator he certainly did not shine, although on particular occasions when constitutional topics were under discussion, he addressed the House with great force and effect. He was also very serviceable in the support of several important measures which were passed through the House of Commons while he had a seat there. On Sir Robert Peel's accession to the Premiership in 1834, Mr. Pollock was selected by him for the office of Attorney-General, which offer he accepted, and was re-elected by his constituents at Huntingdon without opposition, and on this occasion received the customary honour of knighthood, and quitted for ever the Northern Circuit, where he had attained and maintained the undisputed

lead. This must have been a serious loss to him in point of emolument, as his tenure of office was but brief, Sir Robert Peel and his ministry, in the face of a decided majority against them in the House of Commons, resigning their places early in the Session of 1835, and etiquette not allowing of Sir Frederick Pollock returning to the circuit after having held the post of Attorney-General. In Westminster Hall, however, his practice was very extensive, especially in great mercantile cases, and he was specially retained in several leading trials on the different circuits. One of the most important of these was the indictment against John Frost for high treason, which took place under a special commission at Monmouth, in the course of the year 1840. Sir Frederick Pollock was engaged to conduct the defence, and applying his vast legal knowledge and great abilities to the support of his client's case, he was so far successful in what appeared to most persons a legal forlorn hope, that there can be no doubt the prisoner's life was spared in consequence of the doubts thrown by Sir Frederick Pollock's reasoning upon the strict legality of his conviction, and the delays occasioned by the trial being removed to Westminster Hall, and the arguments there before the assembled judges. The case referred for the opinion of the fifteen judges was as follows:—

On a trial for high treason, it was objected that after the jury had been charged with the prisoner, but before the first witness was examined, the prisoner had had no list of the witnesses delivered to him, under the Statute 7 Anne, c. 21. It appeared that the indictment was found on the 11th December, and that on the 12th a copy of it, and of the panel of the jurors intended to be returned by the sheriff, were delivered to the prisoner, and on the 17th December the list of witnesses was delivered to him. The prisoner was arraigned on the 31st December. The objection raised by Sir Frederick Pollock to the delivery of the list of witnesses was that the copy of the indictment and the list of jurors and witnesses should have been all delivered at the same time, *simul et semel*. It was held by

a majority of the judges, after hearing Sir John (afterwards Lord Campbell), the then Attorney-General, in reply to Sir Frederick Pollock, that the delivery of the list of witnesses was not a good delivery in point of law, but that the objection to the delivery of the list of witnesses was not made in due time; and the judges agreed that if the objection had been made in due time, the effect of it would have been a postponement of the trial in order to give time for a proper delivery of the list. It may be interesting to record that the understanding was at the time that Lord Denman, C.J., Chief Justice Tindal, Lord Abinger, C.B., Mr. Justice Bosanquet, Baron Gurney and Mr. Justice Maule, were of opinion that the objection to the delivery of the list of witnesses was wholly unfounded; and that Baron Alderson, Mr. Justice Coltman, and Mr. Baron Rolfe (afterwards Lord Chancellor Cranworth), were of opinion that the delivery of the list of witnesses was not a good delivery in point of law, but that the objection was made too late. Mr. Justice Littledale, Baron Parke, Mr. Justice Patteson, Mr. Justice Williams, Mr. Justice Coleridge, and Mr. Justice Erskine, were of opinion that the delivery of the list was not a good delivery, and that the objection was taken at the proper time. Frost's sentence of death was accordingly commuted to transportation for life. He has, however, we are informed, since returned to the land of his nativity, and is now living, a peaceable and quiet subject we trust, near the scene of his turbulent exploit.

In 1841 Sir Robert Peel returned to power as prime minister, and Sir Frederick Pollock was at once reinstalled in his office of Attorney-General, having as his colleague as Solicitor-General, Mr., afterwards Sir William, Follett. The Attorney-General was on this occasion re-elected by his old and attached constituents at Huntingdon.

In the year 1844, Lord Abinger, the Lord Chief Baron of the Exchequer, formerly Sir James Scarlett, and an old friend and colleague of Sir Frederick Pollock on the Northern Circuit, died after a short illness, being suddenly seized

while on the circuit. The vacancy thus occasioned was at once offered by the prime minister, Sir Robert Peel, to his Attorney-General, Sir Frederick Pollock, who accepted the appointment, which was forthwith conferred upon him, and he was sworn a member of the Privy Council. No question has ever been raised as to his excellence as a judge, to which his extensive knowledge of the law, sound judgment, admirable temper, and uniform courtesy alike contributed, and he was most assiduous and regular in the discharge of his judicial duties. As his biographer in the *Times* well remarks :—

“Perfectly versed in all the antiquated refinements of old-fashioned special pleading, he saw with contentment a new and improved system take its place in 1852, and recognised in the latter the natural corollary of the changes introduced into the process of the courts by the County Courts Act of 1847. But, Tory as he was, he never allowed either the one measure or the other to interfere with the discharge of his duty, or to shock his personal and professional preference for the system to which he had so long been accustomed. His leaning was ever to the side of substantial justice rather than to mere technical accuracy ; and, while sensible of the scientific value of the latter object, he never allowed it to interfere with the higher claims of the former. To this desire of securing the triumph of right and the punishment of wrong must be attributed that apparent readiness to take a side which has sometimes been brought against the departed judge by captious critics ; but even in this failing, if such it was, he ever ‘leant to virtue’s side ;’ and if, in his anxiety to place the salient points of a case well before a jury, he was sometimes led to sink in a measure the Judge in the Advocate, it must be owned that his charges were for the most part as solemn and impressive as they were clear and effective. For instance, during Müller’s trial, it will be remembered by all who were present how his emphatic eloquence moved the deepest feelings of the audience, among whom every sound was hushed, and every nerve was painfully strained as the full force of some apparently trivial point of evidence was pointed out and its bearing explained to the jury, on whose verdict

hung the life or death of the criminal. In a different way his dealing with the Alexandra case was equally noticeable. Though repeatedly pressed to do so, he refused to sign a bill of exceptions to what he had not said, or to certify that he had directed the jury in words which he had never used. The result was that the Crown lawyers were defeated and the prosecution failed. The name of Sir Frederick Pollock may not go down to distant posterity as one of the great original lawyers of the nineteenth century, but his memory, as a man and as a judge, will long be cherished with affection and respect by the legal profession. His name is linked with no one great legal measure, no important judicial change; but it will long furnish an incentive to the diligent study of the law, the upright and honourable practice of legal labour, and the persevering and successful pursuit of its rewards."

There can be no doubt indeed that Sir Frederick Pollock was not entirely exempt as a judge from the failing here referred to, if failing it may be termed, especially common to those who have been distinguished by their success at the Bar—that of being unable entirely to throw off the advocate while acting as a judge, and perceptibly inclining to one side or other of the case, according as the merits appear to him to lie, instead of impartially holding the balance, and leaving the jury to decide the matter entirely according to their opinion. It cannot be denied, however, that this disposition of the judge is, in many cases, productive of substantial justice, as his great experience and knowledge of the law may often prevent the jury from being led astray, or prejudiced by circumstances connected with the case. This was a characteristic of his predecessor Lord Abinger, although it was a remarkable circumstance connected with his judicial career and character that, though he was so eminently successful while at the Bar in leading a jury, he failed to carry the same success with him while on the Bench.

It has also been well remarked that—

"There were two characteristics about the behaviour of Sir Frederick Pollock on the Bench which no one could mistake—his

extraordinary gifts and the extreme kindness and even tenderness of his nature. Nevertheless, when fairly roused, in a case which put him on his mettle, he would speak with a vivacity, a choice of language, and a dignity and force of manner which recalled the old leader of the Northern Circuit in its best days to those who had known him before he was a judge."

One learned serjeant, who has frequently practiced before him, and who, in addition to his high qualifications as an advocate, possesses a knowledge of mankind, and a felicity in expressing his thoughts, which render his opinion of peculiar value, thus writes to us regarding his opinion of Sir Frederick Pollock as a judge :—

"One great feature of his character, or rather practice in criminal trials, was the favour he showed to prisoners. I have heard him direct acquittals in cases where, to my mind, there was not a doubt of criminality, either with regard to law or fact. Every technical difficulty was put in the way of the prosecution, every facility for returning to domestic life was given to the accused. We always felt when he had to try a criminal case that there were three chances to one against any other judge on the Bench. I would have handicapped Pollock at these odds against the very mildest of his brethren. Tory as he was, he always stood up for the liberty of the subject to commit what offence he pleased. Nevertheless, I always looked upon him as a most conscientious trier of cases, if he were only allowed to take his time about it."

A decision of some interest, as affording an instance that in certain special cases it may happen that the strict law applicable to the point may tend to contravene the direct and obvious intention of the parties, was made by the Lord Chief Baron in Michaelmas term, 1844, his judgment in which is remarkable alike for its logical accuracy and the lucidity with which it was expressed. We allude to the case of *Mallan and another v. May*, 14 L.J. Ex., 48. In this case by articles of agreement between the plaintiff, of "Great Russell Street, Bloomsbury Square," and the defendant, whereby the plaintiff agreed to instruct the defendant in the business of a surgeon-

dentist, it was stipulated that the defendant should not, without the consent of the plaintiff, carry on the business of a surgeon-dentist "in London, or in any of the towns or places in England or Scotland," where the plaintiff may have been practising, before the expiration of the said term. It was held by the Court of Exchequer that in its strict and proper meaning the word London meant the City of London, in which sense it ought to be understood in the above agreement, and not in its popular or colloquial signification, as including Great Russell Street, and other adjacent streets. The Lord Chief Baron, in delivering his judgment, observed as follows :—

" We must apply the ordinary rules of construction to this instrument, and though by doing so we may, in some instances, be misled, and defeat the real intention of the parties, such a case tends to establish a greater degree of certainty in the administration of the law. Now one of the rules of construction is that words are to be construed according to their strict and primary acceptation, unless, from the context of the instrument, and the intention of the parties to be collected from it, they appear to be used in a different sense ; or unless, in their strict sense, they are incapable of being carried into effect, and subject always to the observation that the meaning of particular words may be shown by parol evidence to be different in some particular place, trade, or business, from their proper and ordinary acceptation."

In the case before us no reasonable person can doubt that the intention of the instrument referred to, and of the parties themselves, was to exclude the defendant from practising in Bloomsbury, and had no reference to the City of London, where neither of the parties resided or practised. On the other hand, as little doubt can be entertained that the words sufficient and proper to express the intention of the parties were not availed of ; and that it is by the words themselves, not by any external evidence as to the intention of the parties, that courts of justice must be guided. If the parties neglect to use the proper words applicable to the case, and expressive

of their intentions, they alone are to blame, and must take the consequences.

Sir Frederick Pollock's private character stood high in every respect, both as regards his public and his domestic life. On his retirement it was remarked of him in one of the public journals:—

“ We doubt whether any man ever took with him into retirement a larger share of hearty, affectionate admiration than the kind old man who, after presiding over the Court of Exchequer for nearly a quarter of a century, retires into private life, full of freshness and vigour, and surrounded as closely as ever man was by all that should accompany old age.”

It has also been observed that his genial and lively humour was as playful during the last Guildhall sittings at which he presided, as when he first made his appearance at the Bar, or took his seat as Chief Baron for the first time in the Court of Exchequer.

His resignation of his judicial office took place in 1866, when he was in his eighty-third year, on which occasion a baronetcy was conferred upon him in recognition of his long and important judicial services.

Independent of his acquirements as a lawyer, Sir Frederick Pollock was a man of great accomplishments and of considerable scientific knowledge. Indeed, through life he evinced a fondness for science. In chemistry, astronomy, physiology, and medicine, he appeared as much at home in conversation as if to each he had devoted a lifetime of study. Once when presiding at the distribution of prizes at St. George's Hospital, Sir Frederick Pollock said, while addressing the pupils, that had he been able to choose his lot in life he would have studied medicine, but at the same time he would have practised law. And the consideration with which he always treated medical witnesses, and the acuteness with which he analysed medical evidence, were remarkable points in his career. He had also a very extraordinary knack of imitating handwritings, which he could effect so adroitly as to deceive the very person whose

writing was forged. On one occasion he directed a letter to a barrister in a hand so exactly like that of the barrister, that his correspondent supposed that he must have left at his chambers an envelope directed to himself. On another occasion, when on the Bench during one of his circuits, he scribbled a note to the learned serjeant, whose letter respecting him we have quoted, informing him how completely he had deceived his brother judge, the late Mr. Justice Coltman, in this manner. But he possessed acquirements of a more solid kind, and even to a late period of his life he was a contributor of papers on scientific subjects to the Royal Society, of which he was for many years a fellow. In one of his letters to the writer of this memoir he said—

“I cannot continue this correspondence further *at present*. I have to complete a paper which the Royal Society are decided to print in the *Transactions*. Brougham’s first paper was probably that of the youngest member, mine, probably, of the oldest. Next month I shall be nearer ninety than eighty.”

Of the paper in question only an abstract had appeared in the proceedings of the Royal Society, and it was of a similar character to some which had preceded it, containing investigations to which he had been led in the attempt to demonstrate Fermat’s theorem. The paper was returned to Sir Frederick Pollock at his request, as he wished to make some additions to it, and it was afterwards printed in the *Philosophical Transactions*. A very few weeks before his death he was in correspondence with the Royal Society on scientific subjects.

For many years before his death Sir Frederick Pollock interested himself in the theory of numbers. He tried hard to obtain a demonstration of a theorem enunciated without demonstration by Fermat, and which has exercised the skill of some of the greatest mathematicians from Fermat’s time to our own, though no one has succeeded in obtaining a complete demonstration. Though he failed in the attempt

which had baffled so many others before him, Sir F. Pollock was led in the course of his investigations to remark some curious properties of numbers, and some of the various communications which he made to the Royal Society on the subject are printed in the *Philosophical Transactions*. The following is a list of the papers which he presented on the subject:—

(1.) On Certain Properties of Prime Numbers (read 1847)—*Proceedings* Vol. V., p. 664.

(2.) On Certain Properties of the Arithmetical Series, whose ultimate differences are constant (read 1850)—*Proceedings* V., 852.

(3.) On the Extension of the Principle of Fermat's Theorem of the Polygonal Numbers of the higher orders of Series, whose ultimate differences are constant (read 1850)—*Proceedings* V., 922.

(4.) A Proof (by means of series) that every number is composed of four square numbers, or less, without reference to the Properties of Prime Numbers (read 1851)—*Proceedings* VI., 132.

(5.) On Certain Properties of Square Numbers and other quadratic forms, with a Table of odd numbers from 1 to 191, divided into 4, 3, or 2 square numbers, the algebraic sum of whose roots (positive or negative) may equal one, by means of which table all the odd numbers up to 9503 may be resolved into not exceeding four square numbers (read 1853)—*Phil. Trans.*, year 1854, p. 311.

(6.) On Some Remarkable Relations which obtain among the roots of the four squares into which a number may be divided, as compared with the corresponding roots of certain other numbers (read 1858)—*Phil. Trans.*, year 1859, p. 49.

(7.) On Fermat's Theorems of the Polygonal Numbers (read 1861)—*Phil. Trans.*, year 1861, p. 409.

(8.) On the Mysteries of Numbers alluded to by Fermat (read 1866)—*Proceedings* XV., 115.

(9.) On the Mysteries of Numbers, alluded to by Fermat. Second communication (read 1868)—*Phil. Trans.*, year 1868, p. 627.

There are also two other papers of his on geometrical subjects, one in the *Proceedings of the Royal Society*, Vol. IV.,

p. 433, and another in the *Quarterly Journal of Mathematics*, Vol. I., p. 167.

For the above information respecting Sir F. Pollock's papers contributed to the Royal Society, we are indebted to the courtesy and kindness of their able and learned Secretary, Professor Stokes.

Sir Frederick Pollock was also an active member of the Photographic Society, took a deep interest in their proceedings, and presided at several of their meetings.

His familiar letters were full of interest as well as of kindly feeling, and replete with quiet humour.

As regards his domestic habits, he once told an accomplished friend, who now holds a deservedly high position as a County Court judge, and from whom we received the anecdote, that he considered the following were the two chief causes of his uninterrupted good health through life. In the first place, he never began work when tired in the least. He always went to Westminster Hall in a cab, while others thought it necessary to take exercise in going down there, and often arrived at their work hot and fatigued. His other maxim was, never to put anything cold into the stomach; our stomachs, he said, are cooking machines, and if you put cold food into them, you tax the utensil to make it hot in the first place; whereas, when the food is hot, half the work is done before the food goes into the stomach. In order to convince his friend of the effects of good digestion, he jumped up in the railway carriage in which they were travelling, and began to cut a caper, although he was then upwards of eighty years of age.

He seems, moreover, to have cared as little for fresh air as he did for exercise, and even in the hottest weather, in crowded courts, during the summer assizes, kept every window closed, appearing to delight in an atmosphere which very few could inhale without suffering severely.

During the latter part of his career at the Bar, and while he was Lord Chief Baron, Sir Frederick Pollock resided in

Queen Square, Bloomsbury, once the favourite resort of judges and leading barristers, and which he was the last to forsake. He had also a country residence at Hatton, near Hounslow, where he breathed his last, on the 22nd of August, 1870, in the 87th year of his age, respected and regretted by a large circle of friends, as also by the whole legal profession. Indeed it has been correctly observed of him, that through his long career he never made an enemy, while his most casual acquaintances were led to regard him as a friend. Every tone of his voice, every expression of his face, betokened the amiability of his nature, and the warmth of his heart.

The late Sir Frederick Pollock was twice married. First, in 1813, he was united to Miss Frances Rivers, who died in 1827. His second wife, whom he married in 1835, was Miss Sarah Ann Langslow, daughter of Captain Langslow, of Hatton. He had a very numerous family, several by each wife. His eldest son, the present Sir Frederick Pollock, is one of the masters in the Court of Exchequer, and was born in 1815. He graduated in high honours at Cambridge, at his father's old college. He has other sons at the Bar, and one of his daughters is married to Mr. Baron Martin.

Such were the career and character of this eminent and highly gifted man, whose success affords encouragement to each aspirant at the Bar, and whose high-minded course, both at the Bar and on the Bench, supplies an example which many may emulate, and a model which but few can excel. More brilliant orators, and more acute lawyers have adorned our courts, but none whose high moral bearing and great abilities have reflected upon them brighter lustre.

ART. IV.—THE JUDGES AND JUDICATURE OF ENGLAND.

Biographia Juridica ; a Biographical Dictionary of the Judges of England, from the Conquest to the present Time, 1066-1870. By EDWARD FOSS, F.S.A., of the Inner Temple. London: Murray. 1870.

“CERTAIN it is, that when a great learned man (who is long in making) dieth, much learning dieth with him.” Such is the quaint saying of Lord Coke in his eulogium on Littelton in the preface to the First Institute. To few men in our day, who have left this life, could these words be more applicable than to the late Edward Foss, the author of “The Judges of England,” “*Tabulæ Curiales*,” and the work at the head of this article. The studies and researches with which his name is identified he had entered on at an early period of his career, had pursued with steady assiduity amidst the avocations of a busy professional life, and had continued with unflagging zeal, till he died in his eighty-third year, whilst bringing the present volume through the press. Fortunately, much of his learning has been preserved in the volumes which he has given to the world, but much also bearing on the history of English Law has died with him.

The great merits of Mr. Foss as a legal antiquarian were, the thoroughness with which he pursued his investigations, and the accuracy with which he stated their results. The merely plausible accounts of many things connected with the origin and history of our judicial system, which writers even of authority have adopted, would not satisfy him. He spared no pains and no labour to elucidate any obscure matter which came within the range of his studies, and his mind seemed uneasy until he had obtained the solution of any difficulty that occurred to him, or had

satisfied himself that it was insoluble. A mere glance at a few of the lives of the earlier judges in the volume before us will show what pains he took in hunting through Rolls and Charters for the names and offices of men who were entitled to be entered on his list. In some respects, however, his labour was lighter than may be supposed from its results. He knew where to find the information he was in quest of, and it was seldom necessary for him to waste time in exploring barren fields. But he never shirked the trouble of going to original sources when such existed; and in none of the series of "Lives" of great officers of Church or State, of which our day has been so prolific, have scissors and paste been less used than in "The Judges of England." It is on this account that the work is so truly valuable; and it may justly be regarded as the greatest and most trustworthy contribution that has ever been made to our legal history. Future research may possibly throw light on some portions of that history which are still obscure or doubtful, but we confidently believe that in few instances indeed will any amount of research tend to invalidate the statements which this great work contains, or to discredit the views which are therein set forth. Such a work is very little likely to be superseded by one coming from an author more learned and more painstaking than Mr. Foss.

The present volume contains the biographical portion of "The Judges of England," alphabetically arranged and slightly abridged, with some corrections, and with the addition of judges who have been appointed since 1864. There can be no doubt as to the great practical convenience of a biographical dictionary for most purposes of reference, but we think it would have added to the value of the work if a chronological list of judges had also been given. In considering the history of any particular period, it would be nearly impossible to discover from the present volume, who were the judges who then flourished. The

author died before the work had finally passed through the press, but he does not appear to have contemplated any such addition as we have mentioned. We would suggest, however, that in a future edition it would be desirable to supply what we cannot but think is a defect in a work of this nature. We have no other criticism to offer on the form of a work, the substantial merits of which ought to ensure a large circulation.

Of the great interest of the subject on which Mr. Foss's labours were expended, and which are now presented in a form generally accessible, there can be no doubt. Of nothing connected with their history and their institutions are Englishmen more proud than of the judges of England. From our system of party government our greatest statesmen have always been obnoxious to a considerable portion of the community, who differed from them in politics, and our divisions in religious opinions have rendered the fame of our greatest Churchmen only partial and sectional. But the law is independent of party or creed; its privileges are the heritage of all Englishmen, and its ministers have to look only to what it prescribes, irrespective of every other consideration. To them every member of the community, to whatever party or sect he may belong, may confidently appeal for justice as defined by the law. And it may be truly said, that since the Revolution of 1688, the judges of England have shown a degree of independence and impartiality such as was never exhibited by any other judges, or by any other set of men, placed in an official capacity, in any country in the world. They have carried all the best qualities of the English character to their highest perfection, the adherence to established rights, the love of fair play, the spirit of equality and justice, and the disregard of private interests when placed in competition with the public good. Nor have the intellectual qualities of the men who have filled the judgment seat during the period we have mentioned been less remarkable than their moral qualities. The great principles of the

Common Law have been adapted with consummate ability to the wants and circumstances of a state of society entirely different from that in which they were at first established. The doctrines of Equity have been developed with unfailing readiness as new conditions afforded exercise for their comprehensive scope, and have never lagged behind the most rapid changes of society. In the ordinary administration of justice, it is no matter of astonishment to see displayed the most complete mastery over the most difficult and complicated subjects, the soundest and justest discrimination, the most skilful apprehension of the law as applicable to the point in question, the ready detection of sophisms, and the sweeping away of whatever is irrelevant or misleading.

But all these great qualities have not belonged to the judges of modern times alone. *Vixere fortes ante Agamemnona.* The provision of the Act of settlement, that after the accession of the House of Hanover to the throne, the commissions of judges should be made *quamdiu se bene gesserint*, no doubt took a great temptation out of their way, but it is an entire mistake to suppose that it, or the influence of the press, created virtue, where before them had been only corruption. The influence of the Crown had scarcely been felt in the ordinary administration of justice, and the taking of bribes had always been condemned, and never practised except by a few judges. No age or country has furnished higher instances of judicial virtue, than the rugged independence of Sir Edward Coke, and the incorruptible integrity of Sir Matthew Hale. In ability and learning also the older judges, allowing for the times in which they lived, will not suffer from a comparison with their successors in modern days. As a rule, they knew the law thoroughly, and they applied it skilfully according to the ideas which were then prevalent. In all respects they were the worthy predecessors of those who, in more favourable circumstances and in more enlightened days, have adorned the English Bench.

It is interesting to find that since the institution of a

regular judicial system in this country, the judges in general have belonged to the same class in the community. Among the earlier Norman lawyers and judges of England, we find the names of the most powerful feudal families. But as the study of the law became more difficult, from its increasing bulk and complexity, it gradually fell into the hands of the gentry, a class in society almost peculiar to England, which has powerfully influenced her history, and to which she undoubtedly owes much of her freedom and progress. From this class the great bulk of the earlier judges of this country, like the later, sprung; and in the mode in which the former dealt with such a subject as the descent and conveyance of real property, so as to strike indirectly at the power of the feudal aristocracy, we see the influence of their origin. Much of the independence of the Bench may also, no doubt, be traced to a similar cause. Springing in general from honourable families, with a more or less ancient lineage, the judges of England have not owed everything to their official position, and have seldom even on attaining the highest elevation felt themselves immeasurably removed from their native sphere. They never became mere government officials; they were never severed in interest from the community at large; they have always been open to all the influences which have affected the more enlightened portion of society in England.

Another source of interest in such a work as the present is the close connection between the earliest condition of our judicial system and its latest stage. During the eight centuries over which the researches of Mr. Foss extended, various changes took place in the superior Courts, and in the mode of administering the law; but all the innovations which arose were effected simply by a modification of what had existed before. These changes, however, were much more considerable during the earlier portion of this long period, than during the subsequent and larger division. From the time of Edward I., when the separation of the Courts of King's Bench, Common Pleas and Exchequer was completed,

our judicial system has remained substantially as it was then constituted. Of course several changes have taken place, but in no instance have they been of a sweeping character. Mr. Foss has shown that the number of judges in the Courts of Common Law varied considerably up to the reign of Henry VIII., when that of four for each court seems to have been established. Perhaps the most important change in the history of these courts was the placing the Barons of the Exchequer on the same footing as the judges of the King's Bench and Common Pleas. Up to the twenty-first year of Queen Elizabeth, the Barons of the Exchequer had not necessarily been "men of law." They had, in fact, been chiefly selected from the officials connected with the revenue; they did not go on circuit, and held an inferior position to the judges of the other two courts. But as this court, like the Queen's Bench, had brought ordinary actions within its jurisdiction, great inconvenience was felt from the judges not being learned in the law, and after the date we have mentioned, the barons who were appointed were selected from the serjeants-at-law. As these "Barons of the Coif," as they were called, to distinguish them from their predecessors, had no knowledge of revenue matters, it was necessary to obtain the services of an officer who was acquainted with the fiscal business of the Exchequer. This was the origin of the cursitor baron, who was first appointed in 1606, at which time the court was filled with legal barons.

The Court of Chancery has not undergone changes more considerable than the Courts of Common Law, since the time of Edward I. The Chancellor, who had been a member of the Curia Regis from the time of the Norman Conquest, had become the chief officer of State on the extinction of the office of Chief Justiciary. The clerks in Chancery had been in existence for some time before the reign of Edward I., but it was then that the Master of the Rolls was first appointed. The regular sittings of the Court of Chancery were certainly customary about this period. The Common Law jurisdiction

of the Court appears then to have been very much the same as at a later date, but the Equity jurisdiction, as now understood, was as yet only potential. The jurisdiction which had fallen to the Chancellor of correcting the injustice of the law, had been exercised from an early period. This arose from petitions presented to Parliament for redress of private wrongs being referred to him, from which the equitable jurisdiction of subsequent times was gradually developed. But the position of the Court of Chancery relatively to the Courts of Common Law was very much the same at the period to which we now refer as it has been since. .

From the time then of Edward I., when the Courts of Common Law were put upon their present basis, we have Chancellors and Masters of the Rolls, Justices of the King's Bench and Common Pleas, and Barons of the Exchequer in regular succession down to the present day. The system of circuits had been in existence long before that time by means of Justices Itinerant. These were still employed until the reign of Edward III., the duties they performed then devolving on the regular judges when they travelled as Justices of Assize. Even the robes of the Common Law Judges seem to remain unchanged, except with respect to colour. In the time of Henry VI., the summer robe appears to have been green, and the winter, violet. The ornaments of the neck and head have varied, although the coif has still remained. A gold chain has always distinguished the chiefs.

So much for the history of the Courts at Westminster during the last six hundred years, in which we have to deal with institutions and customs which still remain. During the two previous centuries we find our judicial system in a somewhat nebulous condition. The *Curia Regis*, which finally became condensed into the Courts of Chancery, King's Bench, Common Pleas, and Exchequer, was presided over by the king himself, and was composed of the prelates and barons of the realm, and certain officers of the palace, such as the Lord High Constable and Lord Mareschal, the Lord High Steward

and the Chancellor. A consultative body of this nature existed in all the feudal monarchies, but its peculiar development in England arose from the special circumstances of this country.

Over the Curia Regis, in the absence of the king, the chief justiciary presided. This Court had apparently at first no original jurisdiction, but was merely a council to assist the king in the exercise of his prerogative, one of the most important branches of which related to the administration of justice. The matters which were brought before the Curia Regis in connection with this were not by way of appeal from the local courts and the justices itinerant, but rather in the form of complaints of illegal and improper proceedings. This at length led to suits being instituted there, and it led also to the association with the official members of the court of men who had devoted themselves to legal studies. Hence the origin of the Court of Common Pleas, which was formed into a separate Court at Westminster, after Magna Charta had provided that common pleas should not follow the king. On the abolition of the office of Chief Justiciary in the reign of Henry III., a separate Court, presided over by the Chief Justice of the King's Bench arose, which had cognisance of pleas of the Crown. There remained the authority exercised by the department of the Curia Regis, called the Scaccarium, in matters relating to the revenue, which was retained by the Court of Exchequer. The corrective jurisdiction of the Curia Regis, the *officina justitiæ*, and the custody of the Rolls remained with the Chancellor. The steps by which all these changes took place are no doubt somewhat obscure, but there can be no doubt as to the general nature of the process.

Before the separation of the Courts had begun, it is obvious that the Curia Regis had existed for some time as a High Court of Justice, analogous in many respects to what was proposed in the Lord Chancellor's Bill of last Session. Mr. Foss seems to have been struck by the resemblance, and he has left a note on the subject, which has been appended to the

preface he had prepared for the present work. In it, after alluding to the unlikelihood of his seeing the results of such a measure, he says:—

“ I own that I cannot predict that much material benefit will result from the intended change; and I am inclined to think that those who are conversant with the history of the past, will consider the new High Court of Justice little more than a revival of the ancient *Curia Regis*, with all its varied powers and privileges, which were distributed into the present divisions so many centuries ago. Another remarkable restoration will be noted in the new Statute—that by which the legal Terms are reduced from four to three, as they originally stood in the earlier times. But be the innovation good or bad, I am sure it is well intended, and I sincerely hope that it may prove as beneficial to the administration of justice as its promoters anticipate.”—p. xi.

It happened, however, that the Bill of last Session did not pass into law, as Mr. Foss seems to have supposed when he wrote the above observations, and the arrangement of our Superior Courts for the future still remains open for further consideration. We must frankly confess that we have no antiquarian feeling in favour of the restoration of the *Curia Regis*, interesting as that institution may be as the rudimentary condition of the judicial system, under which England has flourished for six centuries. The real question is whether, for the substantial objects which the Bill of last Session contemplated, it was necessary to remodel our Courts in the manner it proposed. The wise and sound method which ought to be followed in the reform of the law, as in all other kinds of reform, is to adopt what leads to the best practical results, without reference to theoretical perfection; and the great problem always is, how to produce the greatest beneficial effects with the least possible change. We cannot say that the Lord Chancellor's Bill was a happy solution of this problem. The fusion of Law and Equity, and the plenary jurisdiction of all the Superior Courts, may be admitted to

be a most wise, practical object, called for by the necessities of the times in which we live, and by the enlightened views of modern jurisprudence; but we fail to see how this object required the removal of so many ancient landmarks, and the obliteration of so many old distinctions, as the Bill of last Session proposed. It introduced new distinctions and new boundaries which apparently were in no respect better than the old. To many persons these changes appeared to be of a theoretical and pragmatical character, and to some who were entitled to speak with authority they seemed fraught with danger to our constitutional liberties. At all events the Bill was crude, and somewhat juvenile in its conception, and it did not appear to have been prepared with all the grave and solemn consideration which such a measure demanded.

What the next Session may bring forth we know not. Important changes in our judicial system are no doubt necessary, and a great field is open for those who possess the proper knowledge and capacity, to adapt it to the wants of the present times. The danger will lie, if we may judge from the measure of last Session, in attempting to introduce too wide a scheme, instead of providing for the redress of admitted evils by modifications of our existing system. It is by the latter mode that all the beneficial changes which from time to time have taken place in the administration of the law of England have been effected; and we firmly believe that it is by the same mode we must proceed in the future, if we really wish to improve our judicature, without endangering those parts of it which experience has shown to be conducive to the true interests of the community.

ART. V.—ON THE UNIVERSAL AND NECESSARY
RELATIONS OF CHURCH AND STATE.*

BY ALEXANDER T. INNES.

ARE there any relations of Church and State, which must always and necessarily exist, apart from those which may, or may not, be constituted in the way of establishment and endowment?

With these last, and with the questions connected with them, we are familiar. They are interesting, and even exciting. But the interest taken in this matter of establishment has had one unfortunate result for the science of jurisprudence. It has withdrawn the attention of thinkers from questions which are more fundamental, and it has led men on both sides of the question to propose shallow remedies for deep-seated and perhaps insoluble difficulties. On the one hand, voluntaries have talked as if disestablishment would cut all knots and relieve all difficulties. The Church, apart from establishment, has been represented as a mere moral power, which could in no way come into direct contact or collision with civil interests. The emoluments of establishment, the privileges of establishment, the coercive power of establishment, are unquestionably all given to the Church by the civil authority—are all part of a monopoly conceded to it by the State; and it is continually assumed, and very often expressly laid down, by reasoners on this side of the question, that if these monopolies and privileges were simply cut away, the State would be free from all farther difficulty and complication on the side of the Church, and in reference to ecclesiastical matters. Then on the opposite side of the controversy, among the supporters of an establishment, a similar fallacy has

* This article contains the substance of a paper read at the recent Social Science Congress at Newcastle-upon-Tyne.

been nearly universal. Their idea and argument has been that disestablishment would drive the Church out of existence, or at least out of public and nationally effective existence. Some have imagined that it could no longer thereafter retain its whole ecclesiastical functions and do its proper Church work. More thoughtful writers have perceived that this is a mistake; but even they have assumed that immediately upon the State withdrawing from the Church its emoluments and privileges, the State would be bound to ignore its existence—at the very least that the State would be able to ignore its existence. On both sides the general assumption for the last fifty or eighty years in this country has been the same. Some have desired disestablishment and others have deprecated it; but both alike have regarded it as practically a close to all relations between the Church and the State.

I venture to think this a mistake; and if so, it is a matter which it specially concerns students of jurisprudence to consider. It is a matter of law rather than of legislation, and the tendency of a mistake at this point is to cut us off from all right theory and principle on one of the most important subjects with which jurists can have to deal.

That a disestablished condition puts an end to all civil questions on Church matters is a mistake quite demonstrable. Take, in the first place, questions of property. If a body of men have wrongful possession of a church, or of a sum of money—on the pretence, for example, that they are the religious body to which the money or the building was given—their opponents have no way of redressing the wrong and vindicating their own rights except by appealing to the civil tribunals of the country. And these civil tribunals have no means of doing justice, except by investigating into the differences of doctrine, discipline, or practice, which are thus brought before them. To the litigants these may be religious differences. To the judge they are mere matters of fact bearing on a question of civil right. But neither the Church litigating, nor the judge deciding, can evade their coming up

for judgment, on the ground that this is not a civil corporation but a Church, and a Church which has no recognition from the State in the form of establishment. If it is a Church, and a Church *tolerated* by the State, questions of property in which it has an interest will necessarily arise; and these will fall to be decided by the State and by the law, as certainly as if the Church were established.

And there are no bounds to the magnitude and variety of the questions which may, or rather must, thus arise, even in the case of a Church not established, with respect to its property. Whatever the form of the Church—Episcopal or Presbyterian, Hierarchical or Congregational—it must carry on its work by means of contributions or endowments of some kind, and in so far as it possesses these it necessarily comes into contact with the whole civil law of the country. No man can bestow fifty pounds upon a religious body without discovering this; but the enormous accumulations of property which have again and again taken place in every country of Christendom, and great part of which were prior to or independent of anything like establishment, have been instances of the same thing. The formal tenure under which a Church possesses the property is of less consequence. It may be held by the dead hand of the ecclesiastical or corporate body, or by the living hands of official administrators. In the early centuries it was not uncommon to bequeath money or property directly and by name “to Jesus Christ,” to the angel Michael or Gabriel, or to one of our Lord’s apostles or saints; and the legislation of the empire made provision for such bequests being received and managed by proper earthly representatives. In like manner at the present day in India, land and money is not unfrequently left to a god, and our law there recognises such a bequest, and provides for its management. Still more of course do the laws of all Christian lands recognise the validity of gifts, bequests, and endowments made to the Church, or to a Church; and although such possessions may ordinarily be held in the name and by the inter-

vention of trustees, they are certainly still in some sense of the nature of the Church's property.

Of course it does not follow, because the emoluments and endowments of a voluntary Church are its property, so that it may be said to have a vested interest in them, that therefore this right of property is absolutely unlimited. The vested interests even of individuals (and still more of public bodies), within a nation, have never interposed an absolute or effectual bar to interference by the nation at large, when some overpowering expediency or necessity has emerged. Even in countries where Church property is held in theory to be sacred or inalienable this has been the case, and the alienations and confiscations of the property of Churches and religious orders in Southern Europe have far exceeded any interference with similar possessions in Protestant countries. How far, and in what circumstances, such interferences are legitimate, or, to put it otherwise, under what implied conditions all property is held by individuals, or by public bodies, and in particular by Churches, is one of the highest and most difficult questions that can be proposed, but it is one which it is unnecessary for us to raise here. It is enough for our purpose to observe that the vested interest of a voluntary Church in its property is, by the confession of all, very much stronger than that of an established Church in the emoluments which it derives from the State. In the questions recently raised with regard to the Protestant Episcopal Church in Ireland, every one felt how much more powerful was the claim for compensation in respect of endowments which had been given by private donors, though it were centuries ago, than in respect of those given by the nation, and which the nation proposed now no longer to bestow. The argument was obvious, that what the State gave the State might have a right at any moment to resume; while the proposal to touch what the Church, even as an established Church, had received from others and held as its own private property, required a very much stronger case to be made out. Many private endowments given to an

established Church are no doubt given to it because it is an establishment; but many others are given to it, and would in any case be given to it, as a Church. And in this latter case quite as much as in that of voluntaryism, a Church stands on its own rights, whatever these are (a point which we shall not minutely discuss)—and instead of persuading the State that it is a necessary or an expedient thing to give it such and such emoluments, it claims merely that it shall not be spoiled of the emoluments which it has already, and which the State did not give. But if it has this right, it has it natively and originally, and quite independently of establishment. We seem, therefore, to be forced to the conclusion that, even in respect of property, the primary and necessary relations of a Church and a State are those which are unconnected with establishment. The emolument of establishment is an accident. It may, or may not, exist, according to the view of duty or expediency which the State may happen to take. But long before establishment exists at all, a most important and necessary relation exists between the Church on the one hand and the State (or the law) on the other, in respect of the civil property which belongs to the Church for Church purposes; and the effect of disestablishment is merely to make this original and essential relation re-emerge. And this original relation is the important one for jurists, though it is this part of the law of Church property that has in this country been overlooked. It is about the Church in its independent position that all the most difficult questions cluster, and it is on this ground that the fundamental rights of parties are to be ascertained.

For the legal questions that relate directly to the property of a Church are only a part of those which we must look for, when there is no complication introduced by establishment. The places filled by the ministers and office-bearers of a voluntary Church have a certain pecuniary value, and the attainment or forfeiture of any of these is a matter about which there will be a constant tendency, rightly or wrongly, to appeal to the

civil tribunals. Nor is the question one only as to a Church's offices of rule or honour. The mere attaining and retention of a place in its membership is a matter on which a high value will probably be set; and as this is a thing in which all Churches theoretically reserve their own right to judge, according to their own rules, and is yet a matter in which individual character and feelings may be largely involved, we see at once that important questions may be raised. In most jurisdictions actions of damages or actions for reparation are competent to those who have been injured in their character and feelings. A man recovers 100*l.* of damages who has been slandered to an extent which the jury estimates at that sum, just as he recovers 100*l.* of which another has injuriously dispossessed him. Consequently, the whole actions of a Church, in so far as they bear upon individuals, are capable of pecuniary estimation, and *may* come under the cognisance of the civil tribunals of the country. The law has to do, at least the law *may* have to deal, with the whole working of a Christian Church, as well as with its whole property.

But if the whole property and procedure of a Church, even when not established, have a civil aspect, it is a rash thing for reasoners on the subject to speak as if declining to establish the Church would cut all knots and solve all public ecclesiastical questions. And it is equally rash for others to speak as if a Church could not carry on all its work to the full in disestablishment. The question arises at once for solution, What claims of a Church, even when not established, can a State acknowledge? The Christian Church in different ages has made many claims, some of them by the consent of all worthy of respect and veneration, and others at first sight doubtful and unsafe. Of all Church claims, perhaps the best known, because it is common to Catholic and Protestant countries, is the claim of self-government, autonomy, or independence. The idea of the independence of the Church is one familiar to every educated man, and by the acknowledgment of the highest and most philosophic minds, it has played a noble

part in European history. "The Church," says Guizot, in his "*History of Civilization*," "originated a great fact—the separation of the spiritual from the temporal power. This separation is the source of liberty of conscience; and it rests upon no other principle than that which serves as the basis of the most unrestricted and extended liberty of conscience. The separation between the temporal and spiritual power is founded upon the principle that physical force has no right or influence over the minds of men, or over conviction and truth. It results from the distinction established between the world of thought and that of action, between circumstances of an internal and those of an external nature. So that this maxim of liberty of conscience, for which Europe has struggled and suffered so much, and which has prevailed only so lately, often against the exertions of the clergy, was laid down under the name of a separation between temporal and spiritual power in the earliest ages of European civilisation." And this distinction between the spiritual and the temporal took the form of a separate spiritual government of the Church, not by chance, but as M. Guizot elsewhere points out, from absolute necessity. "No society can exist a week, even an hour, without a government. The necessity for a power or government over the religious society, as over every other, is implied in the fact of the existence of the society." Fortunately for us theorists the independence or separateness of the government of the Church is made for ever easy to our comprehension by the fact, that this government originated in Pagan times, and for whole centuries was necessarily that of a separate society. At a later date this early state of matters became changed, not merely by Constantine's gifts of coercion. For on the one hand the claims of the Church, especially in the Western communion, began to encroach far more on the temporal power than was implied in that primitive self-government or autonomy. And on the other hand that autonomy itself has, in the case of not a few of the Reformed Churches, been exchanged, rightly or wrongly, for some of

the benefits of establishment. In the first case the Church (in the middle age) demanded more than mere independence. In the second case it has (more recently) accepted less.

We shall, I think, find it expedient to occupy ourselves at present with neither of these exceptional cases. With regard to the Church of Rome, I wish to avoid all matter of controversy; but the claim by an ecclesiastical body to prescribe religious truth (and that infallibly) to temporal powers, the withdrawal of the temporalities of the Church from the jurisdiction of the States in which they locally exist, and the demands for immunity to the persons of ecclesiastics—all these are assumptions so generally repudiated by lawyers in the north of Europe, that there can be no offence in my at present merely passing them by. Those Protestant communities on the other hand which (like the Puritans in the time of our civil wars, and Scotland and the United States in our own time,) still lay stress on the original Church independence, emphatically refuse to conjoin with that position those higher claims which the great Latin Church has put forth. In fact, in their case, Church independence has been historically associated with the struggles of civil freedom against despotism, both civil and ecclesiastical. It is manifestly, therefore, rather in such cases, where there is no establishment, and where independent Church power is put at its minimum—where indeed mere self-government is claimed and nothing more—that we shall find our best illustrations of the theory. It is there that we shall best look for an answer to the double question—to which it is necessary for us as jurists to find an answer somewhere—How far can a civil State tolerate the Christian Church? and, How far can the Christian Church, when independent and unestablished, exercise its whole powers and functions?

On this question, probably, the most important judicial utterance in the courts of the United Kingdom is the principle of the Privy Council decision in the case of *Long v. The Bishop of Capetown* (1 Moo. P.C., N.S., 411), because by its

terms it is intended to apply universally to all religious communities:—

“ The Church of England, in places where there is no Church established by law, is in the same situation with any other religious body—in no better, but in no worse position ; and the members may adopt, as the members of any other communion may adopt, rules for enforcing discipline within their body, which will be binding on those who expressly, or by implication, have assented to them. It may be further laid down that where any religious or other lawful association has not only agreed on the terms of its union, but has also constituted a tribunal to determine whether the rules of the association have been violated by any of its members or not, and what shall be the consequence of such violation; then the decision of such tribunal will be binding when it has acted within the scope of its authority, has observed such forms as the rules require, if any forms be prescribed, and if not, has proceeded in a manner consonant with the principles of justice.”

I observe that in the subsequent case of the Bishop of Natal (*Dr. Colenso v. Gladstone*, Law Rep., Eq. Cases III. 1) some doubt is cast by the Master of the Rolls upon the assertion that the Church of England in the colony is in the same situation with other religious bodies ; that body being held by him to be tied, to certain effects, to the established Church at home ; but on the general question, with regard to the rights of Christian Churches universally, Lord Romilly confirms the position already laid down. He says, in illustration of this—

“ The members of the Church in South Africa may create an ecclesiastical tribunal to try ecclesiastical matters between themselves, and may agree that the decisions of such a tribunal shall be final, whatever may be their nature or effect. Upon this being proved, the civil tribunal would enforce such decisions against all the persons who had agreed to be members of such an association—that is, against all the persons who had agreed to be bound by these decisions ; and it would do so without inquiry into the propriety of such decisions.”

It does not appear to me that more is necessary than is here laid down, in order practically to guarantee the independence, or autonomy, or self-government of a Church, though there is a good deal more necessary in order to work the thing out theoretically. All Churches theoretically repudiate the idea that their original right of self-government comes to them merely *ex concessio* of the civil power; and the statements quoted do not necessarily imply more than such a concession, on the ground of civil contract. By far the most difficult question for lawyers lies behind,—Is the independence of Churches a thing which the law should concede on the ground of toleration and conscience, as well as on that of contract? Is the ecclesiastical region a separate one, with which law should ordinarily refuse to meddle, on the ground of the rights of conscience; or, must a special contract by the parties, making the ecclesiastical judgment final, be averred? This will be found a great question in the future; but in the mean time there does not seem any reason why the Christian Church unestablished should not under the protection of this principle of concession, or even of contract, exercise its complete powers and functions as freely and fully as it can possibly do in establishment. I say, *as* freely; but of course the real state of the case is, that it may do it a great deal more freely, because there is no establishment in the world in which a certain amount of control has not been insisted on by the State and accepted by the Church in exchange for the benefits of establishment. The one case in which, so far as I know, it was seriously and persistently sought to establish an exception, is that most instructive one (to jurists) of the Church of Scotland. In that Church, from the Reformation and first establishment of Presbytery, the claim of independence was always made, and it was claimed as essential to the Church, while other things were mere State concessions and privileges. This is the great peculiarity which makes Scotch ecclesiastical history useful to the law student. The Church there never claimed personal immunity for its officials; it never pretended to with-

draw from the State the independent right of judging upon religious truth for State purposes, and it always acknowledged that control over property of all kinds (including its own emoluments) belonged both judicially and legislatively to the State alone. Again and again in its history it reduced its claims to that of bare self-government in ecclesiastical matters, and by representing this as the original and inalienable liberty of the Church, it sought to secure it even in establishment. The culminating instance of this is perhaps in the Claim of Right of the Church of Scotland presented to Parliament in 1842, in which the Assembly commences by saying, that "They fully recognise the absolute jurisdiction of the civil courts in relation to all matters whatsoever of a civil nature, and especially in relation to all the temporalities conferred by the State upon the Church, and the civil consequences attached by law to the decisions in matters spiritual of the Church Courts;" and only thereafter do they go on to claim (but to "claim as of right"), that the decisions of the Church in these matters spiritual shall not be reversed. This claim had already been refused in anticipation by the House of Lords, Lord Campbell pointing out that "a renunciation of the temporalities of the Church with a view to retain spiritual jurisdiction cannot be made by those who continue members of the establishment;" and on the Legislature also refusing to take it up, those who agreed with the Church that this self-government in spiritual matters was essential were forced to redeem their pledge, and form a Free Church outside. Our Northern Church history therefore conspires with all the other considerations that have been mentioned to assure us that, in order to get at the original and necessary relation of the Church to the State (the former still retaining its self-government, and the latter its supremacy over the civil sphere), we must go outside of establishment.

And I cannot but think that the original jural relations of the Christian Church, while yet it supports and governs itself within the equally independent State, form a noble subject of study. It is certainly a difficult subject. For

even after we have acknowledged the "Free Church in the Free State," as Cavour put it, and its self-government by means of voluntary tribunals, many questions remain. Suppose such a tribunal acts with cruel injustice, is the civil power to give no redress to the party injured by a wrong decision? Or, if the very constituting of these tribunals implies that Church members submit to their wrong though honest decisions, is there to be no appeal against a decision which is not only wrong, but dishonest, though it shelter itself under the form of ecclesiastical law? Or, again, suppose that the decision does not observe the forms of law, but expels a member of the Church without a fair trial—is there no appeal? Finally, if there is in any of these cases an appeal, even from a voluntary and self-governing Church (such an appeal, for example, as is well-known in the history of the Gallican Church as the *Appel comme d'Abus*)—to what extent and effect is it competent? Is the State to confine itself to the large region made over to it by the Church of Scotland—"all matters whatsoever of a civil nature," including the temporalities conferred by the State upon the Church, and the civil consequences attached by law to the Church's decisions in matters spiritual; or is it also to reverse and regulate these matters spiritual themselves, and that even in a voluntary Church?

These questions form a large and most interesting field, and have hitherto not been very much worked. I regret to say that the only jurisprudence with which I profess any exact acquaintance, that of Scotland, is on such subjects in a state of great confusion and helplessness; the theories of northern churchmen, whether right or not, being hitherto far more scientifically reasoned out than those of our lawyers. And yet this subject has been more forced upon our attention historically in Scotland than it has been upon yours in England. This state of things, however, cannot very long continue. A time seems to be coming when the mere technical knowledge of those Statutes, and other machinery,

by which the artificial state of Churches which happen to be established is kept up, will not be enough; and when the essential rights of such institutions, and their universal relations, not to some but to all civil governments, must be considered. Probably no better starting-point for such an inquiry can be found than the original position of Christianity under the world-wide jurisprudence of Rome; and there is certainly no better test of what the claims of the Church must at the lowest be held to have been. Even the eloquent Dean of Westminster, in arguing against Church independence, courageously accepts this test, and founds on the appeal to Cæsar. And it is still more striking to find M. Renan, after a review of the legislation of the same period, holding, on the one hand, that the refusal by the State to admit independent religious societies to exist within it was the root of all the ancient persecutions, and urging, on the other, that the constitution of such free societies is for Europe the great problem of the future.

ART. VI.—THE LORD CHANCELLORS OF
IRELAND.

Lives of the Lord Chancellors and Keepers of the Great Seal of Ireland from the Earliest Times to the Reign of Queen Victoria. By J. R. O'FLANAGAN, M.R.I.A., Barrister-at-Law. 2 vols. London: Longmans & Co. 1870.

EXACTLY a quarter of a century has passed away since the publication of the first portion of a voluminous series of *Lives of the English Chancellors*, inscribed with the name of John, Lord Campbell. That venerable and learned author seems to have occupied the four years of leisure which had followed on his resignation of office in 1841, in the compilation of that which grew to be a very ponderous work, and at the

same time neither an unreliable nor an unamusing one. The seven volumes of "Campbell's Chancellors" are of an order that can specially assert its value when the reader finds himself, imprisoned by bad weather, in a country house. They afford an easy and agreeable method of refreshing the memory as to almost all the salient points of English Constitutional History. There is a flavour of antiquarian and learned research about them, which seems to exclude all suspicion that the time of the reader is wasted on mere idle gossip; while there is furthermore a variety of incident, and a *naivete* of comment, which unite to redeem the work from the charge of dullness. It may be that Miss Agnes Strickland and others were justified in their complaint that the noble biographer had borrowed much from their labours, and had forgotten to acknowledge some of his obligations; but that is almost inevitably the charge brought against comprehensive biographers; and if those seven octavo volumes had not contained a vast amount of newly gathered information, the outcry would have been far longer and far louder.

Furthermore, Lord Campbell was on the whole a tolerably impartial and good-natured writer. He could discourse even upon the life and actions of Lord Eldon himself without acerbity. Perhaps we might go so far as to assert that his sketch of the great Tory Chancellor will in future years be regarded as more valuable, because more discriminating, than the copious and more laudatory biography elaborated at an earlier date by Mr. Horace Twiss, with the aid of family papers and doubtless under family influences. On the whole it is likely that, in the majority of cases, a condensed and impartial narrative, if ably executed at a proper interval of time, will possess a higher permanent value than the familiar and somewhat heavy work, in two vols. with portrait—the authorised biography—which some friend and admirer thinks it a duty to construct shortly after the decease of any very eminent legal or political personage. There were other considerations which must have influenced Lord Campbell's mind,

and favoured his enterprise. Generally speaking, the Lord Chancellor of England has ever been the most capable lawyer, and one of the most eminent politicians of his day. His life-story, therefore, when adequately told, may be expected to include the more noteworthy passages of British history. How could a work be otherwise than of perennial interest, which should tell of More and Wolsey, of Bacon and Clarendon, of Shaftesbury and Somers, of Hardwicke and Thurlow, of Erskine and Eldon?

The fact that Lord Campbell's *Series of Lives* quickly attained to the distinction of a third edition, appears to have suggested enterprises of like character to other writers. "*Lives of the Speakers*," "*Lives of the Archbishops*," &c., were undertaken, and in due course published: but there is no reason for supposing that any of them attained, or ever were likely to attain, to equal popularity; and for this the reasons are not far to seek. No office has been exalted by the genius and adorned by the gifts of its occupants like the English High Chancellorship.

We do not, however, wish to be understood as underrating any of these later works; and the very latest of them, that which brings in view all the former holders of the Great Seal of Ireland, will form the groundwork for the remarks which follow.

Its author, Mr. O'Flanagan, is a very learned and scholar-like member of the Irish Bar, who holds a subordinate position in the Court of Bankruptcy and Insolvency. Many years since he published some volumes which evinced a minute knowledge of the legal history and the topography of his native land.

There appeared to him no good reason why the Irish Lord Chancellors should not be carefully tabulated, and fully sketched—Lord Campbell's experiment having turned out such a happy success. Before undertaking a labour which must have been extremely onerous, or rather before making any considerable progress in it, he communicated with Lord

Campbell on the subject; and, subsequently, with the representatives of that learned judge after his death. It seems that any intention of writing the lives of the Irish Chancellors which may have been entertained by Lord Campbell was not to any discoverable degree carried out. The field was completely unoccupied and clear; and Mr. O'Flanagan took in hand and accomplished his task with as much energy and industry as could have been met with even at Stratheden House. If Lord Campbell had written these "Lives" they might have been more amusingly written; and the style (although no elegance could indeed be looked for) might perhaps have been more clear, pointed, and precise: but as a *repertoire* of information, honestly and laboriously gathered together, the work could hardly have been better executed.

The "Lives of the Irish Chancellors" will therefore hold a position far higher than that of a work to be borrowed during a season from the circulating library, and afterwards forgotten. It may claim to stand on a prominent shelf of every considerable collection of books which already possesses such works as that of Campbell; and, notwithstanding some defects which shall candidly be remarked upon, it may be expected to fill permanently, and on the whole satisfactorily, a niche long vacant in the legal literature of the Empire.

When a second edition of this work shall be called for, Mr. O'Flanagan will do well to make a few alterations here and there. The defects are none of them of great moment, yet they might as well be removed. Humorous stories and indifferent puns are put on record in rather a careless manner: some of the anecdotes are incorrectly though verbosely related; and in more than one instance, the point has been missed, or there was no point which justified the preservation of the joke. Again, some of the foot notes, especially where containing references to the author's friends or acquaintances, should be omitted as being irrelevant to the purpose of the book, and full of unnecessary laudation. Two instances of these not grave defects may here be referred to. A Dr.

Miller is introduced into the text rather unnecessarily; while an ample foot note contains a very full and eulogistic notice of Dr. Miller's son. This gentleman doubtless merits all the praise bestowed on him; but there is no reason why it should be printed amongst the Lives of the Irish Chancellors. Again, Mr. O'Flanagan goes out of his way to attribute the success of the Incumbered Estates Commission (A.D. 1849-1858) to the fact of ex-Baron Richards having presided over it. It would be as reasonable to ascribe the rapid voyage of an ocean steamer to the skill of the steersman, omitting all mention of the steam-engine. The guidance was excellent; but the heavy work of that famous tribunal was performed by other hands; and its success was mainly owing to the untiring energy and rare ability of the late Charles James Hargreave, Q.C., a member of the English Bar, who died in the prime of his years, and of whom a biographical notice appeared in the pages of this Magazine in August, 1866.

Notwithstanding a few defects which may easily be remedied in a second edition, Mr. O'Flanagan has performed a very difficult task with unusual diligence, conscientious accuracy, and praiseworthy impartiality. And having rendered this willing tribute to the author, we may proceed to glance over the chapters of his work, and note some of the more remarkable passages.

The origin of the Irish Chancellorship is involved in obscurity; and for a century or more after the memorable invasion nothing is known except that some bishop, baron, prior, or canon, held the office of chancellor. The first chancellor who can be said to possess more than the mere shadow of a name, was a certain Archbishop de Bicknor, in the reign of Edward II. Like all the early judges and officers of State he was an Englishman. It is no small praise for a man who lived in the "dark ages," to have distinguished himself by encouraging education, and by repressing idleness and mendicancy. Several of his successors were also arch-

bishops; of many of them nothing is known: others were involved in the disputes and troubles which retarded Irish civilization, and proved that "Ireland was never subdued." After a long interval we arrived at Lord Loftus, founder of the noble House of Ely, who, after possessing the confidence both of Charles I. and of the haughty viceroy Strafford, fell from power with unusual suddenness in 1639; and the Great Seal rudely snatched from his grasp, was handed to Sir Richard Bolton, who like many others of his time had in early life crossed the sea to seek his fortune in Ireland. Of his later years it is singular to find so little on record. It is even doubtful whether he held office under Oliver Cromwell, or whether he died in the land of his adoption. The loss or destruction of records has in Ireland left many curious historical gaps, which may perhaps be filled hereafter.

In 1655, one of the three Commissioners of the Great Seal was a man of note, Miles Corbet, who had signed the king's death-warrant, and was afterwards Chief Baron at Westminster. Shortly after the restoration, unfortunate Corbet was arrested in Holland, cruelly treated by his captors, and publicly executed as a regicide in London. Then succeeded Steele and Eustace, not exactly remarkable men, yet living and acting in times of such profound interest, that their brief biographies possess undeniably the qualities which readers most appreciate. Lord Chancellor Michael Boyle was the last clerical chancellor, and he did no discredit to the episcopal order. Although an archbishop, he had a competent knowledge of Equity, and his collection of general rules entitles him to the character of a law reformer. He was one of the sons of the famous Richard Boyle who, at the age of twenty-two, walked into Dublin with no fortune beyond his native shrewdness, and who founded in his own family several remarkably well-endowed peerages. Any estimate of this lucky adventurer's wealth at the time of his death would appear fabulous. His son Michael, archbishop and chancellor, built a country house amongst the hills south-west of Dublin. The house has now disappeared,

but the park, the enclosure, the church and peal of bells, are all shown to the tourist who visits the picturesque village of Blessington, as memorials of its founder. His successor Porter, after holding the Great Seal of Ireland for a time, resumed practice at the Bar in London; and judging from an extravagant compliment paid to him by Lord Clarendon, he must have been a singularly upright man when compared with his cotemporaries. Of a string of his successors, we merely note that they do not seem to have been very remarkable men, or to have influenced the course of history in any appreciable degree. Several of them founded peerages, but few were very distinguished either at the Bar or on the Bench. In truth only two men of the very first order of intellect and capacity have held the office of Lord Chancellor of Ireland; and it is necessary to pass over in silence a long series of their predecessors, in order that we may devote the short space that remains to some mention of John, Earl of Clare, and William, Baron Plunket, with but very slight references to some intermediate names.

John Fitzgibbon, first Earl of Clare, was one of those men who leave their mark on the history of their country. No one can scan carefully that full-length portrait of Lord Clare which adorns one of the largest halls in Trinity College, Dublin, without being conscious that such a man was *capax rerum*, no idle recipient of high honours and large emoluments, no mere ornamental figure-head of a vice-regal government. Power and originality are visibly impressed on the lineaments of a face and form which required no flattery on the part of the artist to make them remarkable. Mr. O'Flanagan found himself unable to sketch the earlier history of the Fitzgibbon family without some parenthetical and rather uncalled-for denunciation of the penal laws. Those laws were, as every man of this and of the last generation will have freely admitted, in the highest degree unjust and impolitic. But they militated little against the success in life of the elder Fitzgibbon and of thousands of other Catholics. He was originally

a Catholic, and the son of a Limerick farmer. Yet he had the manifold advantages arising from an excellent education in France; and he seems to have entered at once into a very lucrative practice, after his return to his native country. While yet a law student, he distinguished himself by publishing a volume of reports of cases determined in the English King's Bench, thereby causing some offence to some of the higher legal authorities, who disapproved of unauthorised reports by an irresponsible reporter. Notwithstanding all penal laws, and other drawbacks of the kind, which certain modern writers delight to dilate upon, Fitzgibbon the elder, the father of Lord Clare, enjoyed a career so prosperous that, although no orator, and not possessed of any commanding abilities, he contrived to amass a hundred thousand pounds. This was no bad career for an unhappy victim of the penal laws. His more famous son started with the advantage of a large fortune, in addition to all other gifts and advantages. During the very first year of his practice the future chancellor realised a considerable income; and at the early age of thirty-four he was made Attorney-General for Ireland. It could hardly be otherwise than that so successful an advocate, feared, if not loved, by all his contemporaries, rivalled by none of his professional brethren, and backed by very large private resources, should become a ruling power in his native country. For nearly twenty years Fitzgibbon appears to have been the virtual governor of Ireland. He was, in the largest sense of the word, an imperialist. He disapproved of the volunteer movement, and of every other movement which, in his opinion, threatened to separate Ireland from England.

Of course these political sentiments rendered him obnoxious to Curran, to Grattan, and to all other prominent men of the patriotic or nationalist party. This animosity did not limit itself to rhetorical warfare; for Fitzgibbon and Curran fought a duel—from which no fatal result followed. In 1789 the Irish Chancellorship became vacant;

and Lord Thurlow for a time exercised all his influence to prevent the appointment of an Irishman. Ultimately he gave way, and wrote a particularly gracious and flattering letter to Fitzgibbon, who on gaining the Great Seal became Earl of Clare. Curran's antipathy soon exhibited itself in bitterly satirical outbursts, even in open court, for in those days men who hated each other made no secret of their feelings. The Chancellor was bold and inflexible in his determination to suppress all insurrectionary movements and tendencies; yet his biographer is enabled to recount many acts of personal kindness exercised towards the unfortunate victims of the national *furor* of 1798. But the most remarkable passages of Lord Clare's career are found connected with the Legislative Union, which seems to have owed its accomplishment in a high degree to his ability and determination. The history of this stormy epoch is not briefly to be summed up. Sufficient to say that the favourite project of Pitt and Castlereagh was most cleverly and rapidly carried into effect by the Irish Chancellor, regardless of the cloud of unpopularity with which he was covering his name and fame. He did not long survive the Act of Union; and on the occasion of his funeral in January, 1802, the Dublin populace exhibited their hatred of his memory in a very unusual and most undesirable manner. Lord Clare's gallant descendant, the young Viscount Fitzgibbon, perished in the light cavalry charge of Balaclava; and the male line being now extinct, the brilliant Chancellor of the Legislative Union is represented by his granddaughter the Countess of Kimberley.

The next Chancellor of Ireland in all respects presented a contrast to his immediate predecessor. John Mitford, while a very young man, wrote his well-known treatise on Equity Pleadings, and soon after his call to the Bar he attained to a considerable practice in Chancery. He was Solicitor-General—Scott, afterwards Lord Eldon, being Attorney-General—during the stormy years which followed the French Revolution.

It must have been a relief when, after conducting far too many prosecutions for sedition and libel, he was lifted into the more serene atmosphere of the judicial world. He went over to Ireland as Chancellor in the year 1802; and there appears to have been no outcry against the appointment of an Englishman to the Irish Chancellorship, as there certainly would be were such an appointment attempted at present. The indirect yet powerful influence of the Legislative Union still for many years subsisted; and during the four years of Lord Redesdale's Chancellorship, the Irish Bar were content to acknowledge his profound and exact knowledge of Equity jurisprudence, without complaining that his earlier years were spent on the Eastern instead of the Western side of St. George's Channel. The ex-Chancellor died in 1817, leaving a son who is known to fame as the Chairman of Committees, and one of the most able and publicly-useful members of the House of Peers. For a short interval the Great Seal of Ireland was held by George Ponsonby, to whose credit or discredit nothing very special can be said. To him succeeded Thomas, Lord Manners, a grandson of the third Duke of Rutland. He was educated at the Charterhouse, and at Emmanuel, Cambridge. In 1805 he became one of the Barons of the Exchequer; and in 1807 he was promoted to the Irish Chancellorship, with a peerage. Mr. O'Flanagan is very unlikely to flatter unduly the memory of this staunch old English Tory, and therefore the following criticism of Lord Chancellor Manners has a special value:—

“He was attentive, decorous, gentleman-like, distinguished for his urbanity; not indeed deeply read, but evincing ability to understand, and judgment to decide. He tried to expedite business, and to simplify the practice of the Court of Chancery.”

His reign in Chancery almost coincided in point of time with that of Lord Eldon in England; and he may perhaps be described as a small-print edition of Eldon. Politically they were alike; yet Lord Manners, although of smaller intel-

lectual calibre than his great cotemporary, appears to have excelled him in one very important particular. He was uniformly averse to delay; and he delivered his judgments very speedily; clearing off his list of causes in a most exemplary manner. Mr. O'Flanagan quotes several satirical and incisive passages from the writings of the brilliant R. L. Sheil, which are more or less unfavourable to the worthy Chancellor; but Sheil was a rhetorician by nature; and his lively descriptions, although destined to be read for many a long year, will always be read *cum grano* by the cautious student of cotemporary history. The next Chancellor of Ireland, Sir Anthony Hart, was also an English lawyer. His name appears in the Equity Reports of many a term, while Eldon presided at Lincoln's Inn. In 1827, there must have been "reasons of State," at this distance of time unfathomable, for passing over Plunket, the foremost member of the Irish Bar, and transporting Hart to Dublin, where he remained for about four years. His amiability, patience, and impartiality made a deep impression on the practitioners in his court, and they seem to have sincerely regretted his departure in 1831.

The next Irish Chancellor was the famous W. C. Plunket, of whom we shall say but little. The Bar of England or of Ireland never produced a more deservedly renowned advocate. The history of his life has been told more than once of late: and it has been very fully set forth in a biography recently published by his grandson, Mr. D. Plunket, who at an unusually early age has deservedly gained the distinction of a silk gown, and the still higher honour of a seat in Parliament as one of the representatives for the University of Dublin.

Plunket, as all the world knows, began life as a flaming Nationalist; and as such he consistently and resolutely opposed the Legislative Union. Many of his countrymen have, however, never forgiven his memory for a display of energy in prosecuting some of his former friends, whose patriotism outran all bounds of discretion. But it is admittedly hard to convince the public that an advocate having taken a brief,

whether from the Crown or from a prisoner, is bound to use his best exertions for his client. In later years, Lord Plunket, who had a numerous family, happened to find ready to his hand extraordinary and unexampled methods of providing for them at the public expense. Mr. O'Flanagan quotes (Vol. II., p. 563) a list of these emoluments enjoyed by Lord Chancellor Plunket and his sons and dependants, amounting to nearly 28,000*l.* per annum. Probably there are several inaccuracies in this remarkable catalogue; but making due allowance for errors, there can be little doubt that Plunket and his family drew greater revenues from the public than any domestic group in modern days. It is fair, however, to add that several other legal and political men of renown might have been equally ready to have availed themselves of opportunities of enrichment, if such had offered. Plunket was in no way remarkable as a judge. His fame, which will not quickly be obscured, rests upon his manly, eloquent, and spirit-stirring utterances in Parliament and at the Bar, and it is very questionable whether this empire ever produced a man who surpassed Plunket as an orator.

The work before us does not carry down to a later date the history of the Irish Chancellorship. Lord Campbell himself succeeded Plunket, his tenure of office being limited to a few days. Then came the learned Sugden, who for several years enlightened the domain of Equity Jurisprudence in a manner familiar to those who have read the Reports of Drury and Warren. Then followed a very long tenure of office by Sir M. Brady, a very just, accurate, and painstaking, if not a brilliant, Chancellor. Later changes have occurred of which there is no need to speak, further than to note that this great office is now worthily filled by one who combines the character of the upright judge with that of the accomplished orator. The warmest friend of Ireland cannot utter a more fitting prayer than this—that her destinies may henceforth be guided by the hands of men possessed of moral qualities and mental endowments like those exhibited by Lord Chancellor O'Hagan.

ART. VII.—THE CHURCH BUILDING ACTS.

AS we pass through the villages of our land, we see modest, unpretending buildings with some fanciful scriptural name over the doorway, such as "Salem, Bethel, Ebenezer, &c.," indicative of the peculiar tenets of their attendants; oft times the more intelligible words, "Wesleyan Chapel," remind us of the zeal and influence of the founder of "Methodism," and a Roman Catholic chapel, too, shows that the emissaries of Rome have not been remiss in propagating their faith. Generally at the outskirts of the village stands the parish church, conspicuous as the emblem of the national religion. In our towns the same scene repeats itself, save that the chapel of the Nonconformist and the Romanist is a more prominent and imposing edifice, and the number of newly erected churches also testify to the wealth and energy of the adherents of the national faith.

It may be instructive, if not interesting, to examine under what different circumstances these edifices, distinctive as they are of two separate classes of religionists—Nonconformists, as including every grade of dissent, even that of Roman Catholicism, and Churchmen, whether high, low, or broad—have been built and made available for religious worship. No Act of Parliament, beyond the provisions of the Mortmain Acts, fetters or controls the spontaneous action of any religious body, other than that of the Established Church, in the erection of religious edifices or the endowment of their ministers. Owing to our diocesan and parochial system, the interests of the bishop of the diocese, of the patron and incumbent of the benefice—the latter to be affected more especially by the increase of church accommodation—must be consulted. A cumbrous procedure has been established, surrounded by numerous intricate conditions, created from

time to time by Acts of Parliament, now swollen to a large number, containing a body of law very difficult of interpretation, known to us as the "Church Building Acts."

Our cathedrals and old churches had been built at the cost of individuals or ecclesiastical bodies, but an impediment had been cast in their path by the passing of the Acts of Parliament which prohibited the bequest of land for any such purpose. From the days of *Magna Charta* downwards, there had been a great dread of land becoming in perpetuity the property of ecclesiastical bodies, to be held, as it was technically called, in "mortmain," implying thereby that it was inalienable, as the hand which held it was powerless as to transferring it to any other object. Many Statutes had been passed to extend and confirm this restriction on transfer of land for religious purposes. The clergy, however, oft times defeated this object by ingenious legal subtleties. These Statutes culminated in the Act of 9 Geo. II. c. 35, the preamble of which runs thus:—

"Whereas gifts or alienations of lands, tenements, or hereditaments in mortmain are prohibited or restrained by *Magna Charta*, and divers other wholesome laws, as prejudicial to and against the common utility. Nevertheless, this public mischief has of late greatly increased by many large and improvident alienations or dispositions, made by languishing or dying persons, or by other persons to uses called charitable uses, to take place after their deaths to the disherison of their lawful heirs."

The effect of the Statute was to prohibit the bequest of land by will to any charitable purpose, and the building or endowing a church or its minister came within that prohibition.

At the beginning of the present century the followers of Wesley and Whitfield, the founders of the Methodist Connections, were numerous and influential; although they frequently preached to crowds in the open air, they had procured the erection of meeting-houses or tabernacles, and had

secured a large congregational attendance. Other sects had introduced "dissent"—steps then deemed prejudicial to the interests of the national faith. The increase of population had been great, and the sense of the Legislature was roused to the importance of providing more effectually for the religious worship of the members of the Established Church. Many pious persons would give after death what they would not part with in their lifetime, but the Act of Geo. II. prevented this. In the year 1803, an Act* was passed "to promote the building, repairing, or otherwise providing, of churches and chapels, and of houses for the residence of ministers, and the providing of churchyards and glebes." It provided that land, not exceeding five acres, or 500*l.* in value, might be given either by will or deed towards erecting, rebuilding, repairing, purchasing, or providing any church or chapel, where the Liturgy and rites of the United Church of England and *Ireland* were observed. This Act was amended† to remove any doubt as to the power of the Crown to make such grants of land.

It was not, however, until fifteen years after the passing of this Act, that any decisive step was practically taken towards the promoting the building of Churches. Upon the establishment of peace in 1815, our Legislature, no longer absorbed by questions of foreign warfare, turned its attention to the objects of domestic welfare. Sedition and infidelity were rife, prosecutions had been instituted against the most prominent and defying transgressors, often without success,‡ clubs were formed for the avowed purpose of disseminating blasphemy and deriding Christianity, and even among the well-disposed religion was too often treated with apathy, if not neglect. The ministry of the day were roused to a sense of duty, and on the opening of Parliament, January, 1818, the speech of the Prince Regent, who was acting as sovereign

* 43 Geo. III., c. 108.

† Qy. 51 Geo. III. c. 115; and 52 Geo. III. c. 161.

‡ *E.g.* The trial of Hone in 1817.

during the incompetency of George III., contained this paragraph:—

“The Prince Regent has directed us (the Commissioners appointed to act in the absence of the Prince) to direct your attention to the deficiency which has so long existed in the number of places of public worship belonging to the Established Church when compared with the increased and increasing population of the country. His Royal Highness most earnestly recommends this important subject to your early consideration.”

Consequently the Chancellor of the Exchequer of that day in the month of March following, moved that this recommendation should be taken into consideration. After showing by statistics the deficiency of Church accommodation in several dioceses, he concluded by moving that “the sum of one million should be entrusted to commissioners to be by them advanced under certain regulations and restrictions towards building and promoting the building of additional churches and chapels in England.”

These provisions were embodied in a Bill which speedily passed both Houses without any opposition, save upon some of its minor details. This Act being the basis of the numerous Acts, numbering in the whole twenty-six, which have been engrafted upon it, it may be worth while to examine its provisions, although it has been so modified or amplified by the subsequent Acts as not to be relied on alone. Its primary object was to promote the building of churches in populous places, and its first and most important step was to provide funds for the purpose; 1,000,000*l.* was therefore to be paid out of the Exchequer. Commissioners were appointed for the space of ten years; that period has however been from time to time extended, and by the 19th & 20th Vict. c. 55, after 1st January, 1857, their duties, power, and authority were transferred to the Ecclesiastical Commissioners, they were to examine into the state of the parishes and extra-parochial places in the metropolis and its vicinity, and in all other parts of England and Wales, for the purpose of ascertaining

the parishes and places in which additional churches or chapels for the performance of Divine Service according to the rites of the Church of *England and Ireland*, as by law established, were most required, and the most effectual proper means of affording such accommodation.

They were empowered to make grants or loans for building, or in aid of building, churches or chapels in parishes or extra-parochial places, containing not less than 4000 persons, in which there was not sufficient church accommodation for one-fourth part of such population, or in such places in which it should appear that 1000 persons were resident more than four miles from any such church or chapel, and in which the Commissioners should be satisfied of the inability of the parishioners or inhabitants thereof to bear any part of the charge of such building. The Commissioners might, if they deemed it expedient, divide any parish into two or more distinct and separate parishes or ecclesiastical districts, by an Order of the King in Council, with the consent of the bishop of the diocese and the patron of the living, reserving, however, the tithes and other ecclesiastical dues or profits to the incumbent of any parish to be divided. For twenty years after the day of its consecration, every district church was liable for rates towards the repair, &c., of the original parish church. In every church or chapel built by the aid of a grant through the Commissioners, or by rates, one-fifth part of the sittings were to be "free seats;" the other sittings were to be let at a rent to be fixed by the Commissioners, out of which a stipend was to be paid to the minister, to be approved of by the bishop of the diocese.

These are the main provisions of the first Church Building Act, and which have practically been observed in framing the subsequent Acts, which amount to twenty-six; amending and repealing portions of each other, whereby such confusion and complication have been created that it is difficult, if not impossible, to arrive at their meaning. In dealing with a

question of Church rate under a local Act of Parliament,* now some years since, Dr. Lushington, sitting as Judge of the Consistory Court of London, said, "It has been no easy task to discover the meaning of the local Act, but that Act is light itself compared with the obscurity of the Church Building Acts." When a judge so enlightened, and competent to pronounce an opinion on that branch of the law with which he was so familiar, uses such language as this, it might have been expected that some steps would have been taken to remedy so growing an evil, but no; law reform proceeds but slowly, and it was not until long after these words were uttered, and when the Church Building Acts were denounced by all as a chaos of unintelligible confusion, that a remedy was attempted. In the year 1863 a comprehensive Bill, entitled "Church Building and New Parishes Amendment Act," repealing either wholly or partially all the Acts bearing on the subject from the 43 Geo. III. to the 19 & 20 Vict., both inclusive, extending over more than half a century, consolidating all the chief provisions of them, drawn by an eminent ecclesiastical lawyer,† was introduced into Parliament by the law officers of the Crown and the then Secretary of State, Sir George Grey. The Bill, as may be well supposed, since it embodied most of the provisions of twenty-six other Acts, is very lengthy; it contains 407 clauses, it is similar in its arrangement to the Merchant Shipping Act, divided into parts, with a clear and copious index, comprising within it all the Statute Law on the subject, whereby, instead of having to refer to several Acts to ascertain how much of each is repealed or amended, or how far the provisions of one are consistent or not with those of another in order to arrive at anything like a rational construction, and frequently failing in the attempt, the whole body of the law is collected and comprised in one Bill clearly and plainly laid down. Would that the same process were followed, so as to reduce the several Acts on any one branch of law into one intelligible Statute. We have on our Statute Book twenty-five

* The Hackney Church rate case. † Archibald I. Stephens, Q.C., LL.D.

separate Marriage Acts, and although a commission was appointed to inquire into and report upon the state and operation of the various laws now in force in the different parts of the United Kingdom with respect to the constitution and proof of the contract of marriage, followed by an elaborate report dated July, 1868, and although a promise has been made by the Government that the law shall be improved, nothing has yet been done.

Much, however, has been done in the right direction upon this general question by the enactment 26 & 27 Vict. c. 125, intituled "An Act for promoting the revision of the Statute Law, by repealing certain enactments which have ceased to be in force or have become unnecessary." The Lord Chancellor (Westbury) in introducing that Bill said, in reference to the codification or framing a digest of our law :—

"When this is done, when the Statute Book has been cleared of superfluous and unnecessary matter, I hope to propose that another process be gone through, to which the previous labour is merely introductory. The enactments spread throughout the Statute Book relating to different subjects must be brought together in a connected form; I shall propose, therefore, to have a systematic classification of the subject matter of our legislation, &c."

The Bill he introduced soon became a law, whereby 1500 Acts of Parliament which had become inoperative or obsolete were discarded from our Statute Book. A volume has recently been published, styled "The Statutes—Revised Edition;" it contains in 792 large octavo pages all the Acts in force from 20 Henry III. (A.D. 1235-6) to 1 Jas. II. (A.D. 1685). It is presumed that the revised Statutes to the present day will not occupy a more bulky volume.

To return to the Church Building Bill of 1863. The second reading having passed, it was referred to a Select Committee, but no report upon the Bill was made before the end of the Session, it therefore died a natural death, was included in the doom of the innocents, and nothing has been heard of it since.

Could not some bishop or one of the archbishops either resuscitate it himself, or stir the Lord Chancellor to bring it again to life. It is a subject peculiarly fitting the attention of that branch of the Legislature containing so many prelates, as also one, if not more, ecclesiastical commissioner.

In the year 1835 two Royal Commissions were appointed to consider the state of the several dioceses of England and Wales, to ascertain the amount of their revenues, and arrange a more equitable distribution of episcopal duties, and to devise the best mode of providing for the residence of the clergy on their benefices. In consequence of the report of these commissions, the Act 6 & 7 Will. IV. c. 77, was passed, naming commissioners and making them a body corporate; very large powers were conferred on them by subsequent Acts, and they have consequently become a very important and influential body. It is no part of our purpose to say more on this subject than it was into this body that the Church Building Commission merged. And it is the Ecclesiastical Commissioners who supervise and control the erection of our churches, and those who have to seek their countenance or support must be fully aware of the inconveniences of doing so. They have an enormous fund at their disposal. According to their last report in the present year, they intend to dispose of 300,000*l.*, of which a sum of 3000*l.* a year is to be appropriated in perpetuity to the endowment with 200*l.* a year of new churches.

Any body or person may build a church having provided the site, and may acquire the patronage thereof in perpetuity with consent of the bishop, provided it is endowed (that is, a maintenance with a residence, or a fund for the purpose, is secured for the minister) and a competent fund is provided for the repairs of the church to the satisfaction of the Commissioners. A reference to the Acts will show the difficulties which beset such a proceeding. In the Consolidated Bill of 1863, which we have named, they are set forth in Part II. Churches may also be built without endowment by private subscriptions. Thus—if any twelve or more substantial

householders of any parish, district, or place, certify to the bishop that there is not church accommodation for more than one-fourth of the inhabitants thereof, or that the existing churches, or church, are, or is, situated at an inconvenient distance from the places of residence of any large number of the inhabitants, and that the persons desirous of building the church will provide out of the pew rents a competent stipend for a minister and the expenses incident to the performance of divine service, and the bishop give his consent, and is satisfied with the site and plan of the proposed church, such church may be built and used as such.

Again, churches may be built by, or with aid from, the commissioners, that is, out of the fund under their control; the rights of the patron and incumbent of the parish or district in which the proposed church is to be built are to be respected and reserved.

These are mere general outlines of the procedure towards building a church of the established religion; for the conditions to be observed, the forms to be complied with, and the general requisites towards completing that object, the Acts must be consulted. The Bill of 1863 has simplified them much by logical and systematic arrangement of their several provisions. Let us hope that it may soon become a binding law; in its passing through the Legislature, the doubts which have arisen in construing some of the provisions of the existing Acts may be removed, and a more clear and definite mode of procedure towards building a church, with all its surrounding circumstances, be established; but at all events the enactments of twenty-six Acts which have been accumulating for more than fifty years will be condensed in one comprehensive Statute.

ART. VIII.—RECORDS OF COUNTIES.

OF the provincial judicatures in this country, perhaps the most extensive, and one of the most ancient, is the Court of Quarter Sessions. By the terms of the commission, it had the *Jus archivi*, the justice first named being appointed *custos* of its rolls. This nomination is a mere honorary distinction, save that the *custos* has the patronage of appointing the clerk of the peace, who in the above behalf is his deputy. That officer should be gifted with legal learning and ability, or, as he may appoint a deputy, this qualification should be possessed by the deputy. The rolls, however, are still those of the justices, and it is against them that a *mandamus* to produce them must issue.

The Sessions' jurisdiction was originally over offences and breaches of the peace, in the preventive and punitive functions; but other concerns, as bridges, prisons, poor, wages, &c., were at very early dates put under their administration, and of these some required powers of taxation.

Pursuant to the direction of the commission, the *custos*, or his deputy, the clerk of the peace, entered an account of the justices' proceedings at Quarter Sessions in rolls or books, and filed the presentments of offenders, indictments, &c., laid before them; also the orders, certificates, convictions, &c., of justices out of Sessions, brought thither for confirmation; and licenses for concerns and businesses requiring restriction, or regulation to avert nuisance, of which licenses for ale-houses furnish an early instance (5 & 6 Edw. c. 23); so for theatres (28 Geo. III. c. 30), madhouses (14 Geo. III. c. 49), lying-in hospitals (13 Geo. III. c. 82), horse slaughter-yards (26 Geo. III. c. 71); so also chapels or conventicles for Dissenting congregational worship, and ministers licensed or certified under 1 Will. & Mary, sess. 1, c. 18 (Toleration Act); 52 Geo. III. c. 155 (Protestant Dissenters);

31 Geo. III. c. 32 (Roman Catholics): so also for protection of the members, &c., of benefit societies, friendly societies, and loan societies, whose rules were sent to be confirmed by Sessions, and were filed without fee, and annual returns of them were also filed without fee, under 4 & 5 Will. IV. c. 40; and savings' banks rules were deposited without fee, under 9 Geo. IV. c. 92; so for publication of names of official persons, and securing their qualification, as swearing rolls kept for entering the oaths taken by various officers, &c., under the Test Act, 25 Car. II. c. 2; to these may be added regulation of labour and various trades, of which the inspection of "Weights and Measures" is one important adjunct and is still retained, though some of the others are discontinued.

The above documents relate to the public business of the sessions, and may be called *Records of Court*, but there is a mass of deeds and papers brought by direction of various Statutes into the County Offices from the consideration that they afford facilities for keeping, copying, and resorting to inspect, instruments locally affecting places in the county, and which deeds, &c., it is deemed important to preserve for public or general reference.

Some of these are directed to be "enrolled," some to be "filed," and some "entered or filed," or "kept among the records." When enrolled they, or transcripts thereof, are put on the roll of the time, and they may be called *Inter Records*, if they are to be filed they are strung amongst the other contents of the sessional bundles.

The distinction of enrolling and filing is said (1 Marsh. Rep., 261) to be more of a directory rule to the clerk of the peace than of public import. It is probable that the law-maker did not always understand the distinction. A direction to "enter or file" probably gives the officer choice in the matter. "Depositing" might mean simply leaving with the officer at the office.

Such depositing, enrolling, &c., of deeds and documents does

not make them matters of record, where the Sessions Court takes no cognisance of the act of enrolling, &c., at the time of doing it. They are recorded to be kept in memory, and the Court furnishes the means of such recording, but takes no judicial notice thereof.

Although publicity was the object of these documents being brought to the office, that object is not always stated in the Statutes, but it may be inferred from their nature and from analogy; still questions have sometimes arisen as to the extent of the public right of inspecting county records.

Probably the right of inspection extends to all persons as to the county rolls and books of a judicial nature, and to persons interested as ratepayers as to the records of the public concerns, regulated and managed by justices out of the county rate; but whether this right of inspection is general or limited, and howsoever it may be limited, there can be no doubt that the documents are more or less public, and that every one has an interest in their being safely preserved.*

Awards under Inclosure Acts are the most numerous and most important documents of the above class. The collection awards in the office of any county, as compared with the number of Acts for Inclosures in the county is defective, as will be more fully explained hereafter. Accompanying most of these awards are maps or plans. The maps, particularly those made by the Inclosure Commissioners, are on a large scale and on whole sheets. Where they represent

* The records of the courts of law are open to the inspection of every person, and the Court will order inspection if the officer refuse it (*Fox v. Jones*, 7 B. & C., 732); so it has been said that the books of Quarter Sessions are public books, which every one has a right to inspect (*Herbert v. Ashburner*, 1 Wills, 297; *R. v. Barking*, cited; *R. v. Purnell*, 1 Blk., 39; *R. v. Sheriff of Chester*, 1 Chitt R. 477). But the general right of every man to inspect the books of Quarter Sessions was doubted by Abbot, C. J., who said, "We grant a mandamus to inspect corporation books as a matter of right to burgesses who have an interest in the corporation, but I know of no right that this Court has to authorize a person to inspect the books of Quarter Sessions. I cannot accede to the proposition; it is too general. I am not aware that every man has a right to inspect the books of all the Quarter Sessions in England, and say to the clerks of the peace, 'Let me see your books,'"

large tracts, they are liable to be torn and injured by being handled and turned about in searching after particular allotments, and to prevent this the accommodation for inspection in the office ought to be ample.

The General Acts under which awards are to be enrolled are 41 Geo. III. c. 109 (General Inclosure Act), 6 & 7 Will. IV. c. 115 (Common Field Inclosure), 8 & 9 Vict. c. 118 (Commons' Inclosure).

Bargains and sales of estates afford another instance. By the Statute of Enrolment, 27 Hen. VIII., c. 16 (1536), no freehold or inheritance shall pass by bargain and sale of lands unless the same be in writing, indented and enrolled within six months in one of the King's Courts at Westminster, or within the county where the lands lie, before the custos rotulorum and two justices of the peace, and the clerk of the peace, or two of them (the clerk of peace being one). There is a scale of fees to justices and clerks: where the land exceeds not 40s. yearly value, 2s., 1s. to the justices, and 1s. to the clerk of the peace; and where the lands exceed 40s. yearly value, 5s., whereof 2s. 6d. to the justices, and 2s. 6d. to the clerk of the peace for enrolment. The clerk of the peace is to engross on parchment the deed, and deliver the roll to the custos rotulorum, to remain with other records of the county, to the intent that every party that hath to do therewith may resort to and see the effect of the writing enrolled.

This was the scheme of a Register of Deeds, the bargain and sale being the only then known secret conveyance of lands, and which it was supposed would, on account of the virtue given to it by the Statute of Uses, supersede feoffment with livery of seizin. But it was held by the Courts that the Statute of Enrolment did not extend to a bargain and sale for a term of years, and the ingenuity of lawyers turned this decision to profit by their invention of the lease and release form of conveyance (a bargain and sale for a year, under the Statute, and a

release at Common Law thereupon), by which the condition of enrolment—obnoxious as involving publicity and expense—was got rid of, and the Act as a scheme of registration proved abortive, although the bargain and sale was not entirely superseded. That at first some registration was done in the counties under the Statute appears by a subsequent Act, 37 Hen. VIII. c. 1, which is a complaint against ignorant clerks of the peace, that the deeds of parties brought to them for enrolment were, through their negligence in not duly enrolling them, rendered frustrate.

The object of the enrolment of bargains and sales was expressly declared by the Act to be that every person who had to do with the land might resort to the record, and see the effect and tenor of the instrument enrolled, yet no fee for inspection was fixed. In connection herewith it may be noticed that a Statute for Private Estates Registration was from 1715 until 1791 in force, in the case of persons who declined to take the Oaths of Supremacy, and subscribe the Declaration against Transubstantiation. Such enrolments were to be preserved amongst the records of the county, the object being to facilitate the taxation of such estates. Enrolled here also are proceedings on taking lands in several cases for public undertakings, conveyances of turnpike houses sold, and a recent provision of this kind occurs in the Artisans' Dwellings Act, 31 & 32 Vict. c. 130, s. 29, which directs the registry in the county office of charging orders and accounts.

Books in the nature of records are made up by the clerk of the peace in virtue of his office, and may be called *Records of Office*, as in the instance of jurors' books. These under the name of the Freeholder's book are of some antiquity.

Voters' Lists and Qualifications.—By an Act passed in the 18 Geo. II. c. 18, payment to the land tax was required to qualify a 40s. freeholder to be a county voter, and

hence duplicates of land tax assessments had to be delivered by assessors to clerks of the peace, to be by them kept amongst the Records of Sessions, open to inspection for 6*d.*, and of which copies are to be furnished at 3*d.* for 300 words. These documents were received for each county until the Reform Act of 1832 came into operation, and those received ought to be amongst the records of the county.

As land tax was only on the land itself, and not on annuities granted out of it, the above provision was supplemented by 3 Geo. III. c. 24, for entering in books kept by the clerk of the peace memorials and certificates of the annuities granted out as qualifications. The book to be open to free inspection. The Voters' Register has supplanted all this. That has to be made up by the clerk of the peace, a duty troublesome to him and burdensome to the county.

Besides these, from early times, divers registers and returns of public matters had to be kept and made by the clerk of the peace. The duty of making these registers, &c., was cast on this county officer, partly for the sake of obtaining the stamp of his official authority to their accuracy, and partly for publicity. Others, of the like kind, were brought to him with the latter view only; such as appointments by lords of manors of gamekeepers, which have to be entered with the clerk of the peace, are open to inspection without fee, but for the clerk's certificate 1*s.* 8*d.* is payable (Stat. 9 Anne, c. 25). This has been kept in counties from the date of the Act to the present time. Returns of men able to bear arms: of trained archers, a roll had to be kept by the clerk of the peace (2 Ed. VI. c. 14) for the king's information; of fencible men, horses, and armour, in each county, particulars to be comprised in indentures, one part to be kept by the Military Commissioners, and the other left with the clerk of the peace, 4 & 5 Philip & Mary. So, in more modern times, returns of militia men had to be made to the clerk of peace, and by him to the treasury, 26 Geo. III. c. 107. A register of

recognizances taken on grant of alehouse licenses was required to be kept (26 Geo. II. c. 31, s. 5).

Of Charitable Donations (existing and future).—Memorials by trustees had to be registered by the clerk of the peace in books for a fee of 4s., to be kept for inspection, and furnished with index, and of which a copy might be had at 1s. per 100 words. Stat. 52 Geo. III. c. 102.

Periodical Returns and Statements—as of Turnpike Roads. By Stat. 3 Geo. IV. c. 126, ss. 69, 78, 79, a statement of revenue and expenditure of the turnpike roads in the county has to be transmitted to the clerk of peace, and produced by him at next sessions, and by him to be kept among the records of the county. Charity.—By Stat. 16 & 17 Vict. c. 137, an annual statement by the trustees of charities of the receipt and expenditure of their income had to be delivered to the clerk of the peace, who had to register the same, but without fee. It was open to inspection for 1s., and copies cost 2d. per folio. This is discontinued. By a recent Act the undertakers of Gas Works and Water Works have to send annual accounts of their receipts and expenditure duly audited, to the clerk of the peace in England or Ireland, or to the sheriff clerk in Scotland under a penalty of 20l. The account to be open for inspection for 1s. By the Pauper Lunatic Asylum Consolidated Clauses Act, 16 & 17 Vict. c. 97, s. 63, list of lunatics in the asylum of the county is to be sent by the clerk to the visitors of such asylum to the clerk of the peace; and, by s. 64, lists of lunatics in or out of asylum chargeable to unions in the county have to be sent by clerks of guardians to the clerk of the peace for the county half-yearly. The lists so sent, the clerk of the peace is directed to lay before the justices, but no further directions are given in relation thereto.

By the Standing Orders of the Houses of Parliament, documents relating to projected public undertakings, such as railways, &c., are directed to be deposited by promoters of Bills with clerks of the peace.

By 8 Vict. c. 16, s. 161, a copy of a private Act relating to a railway, canal, and other like undertaking of which the works were not confined to one town or place in a county, is to be deposited with the clerk of peace. Inspection thereof to be had as in case of Parliamentary documents. There is a penalty on officers for neglect of making this deposit, but nobody is charged to enforce the penalty.

Official certificates may be given by the clerk of the peace of certain matters in his custody by various Acts; for instance, he had on demand to furnish at a fee a certificate of the convictions of an alehouse keeper for breach of his recognizances. Stat. 26 Geo. II. c. 31, s. 11. The above gives a general idea of the range of a county collection of records. We will now advert to the record office or building.

In a design for keeping things by way of continual remembrance it is strange that the repository where they should be kept should be left to chance. The general law, while it appointed an officer of these records, provided no building for their reception. As they were the Rolls of the Justices, it may have been intended that they should be kept where they held their general sessions, which would be under some roof or other, although there was no general law until recently for providing such roof even for the sessions. Or as they were to be kept by the clerk of the peace, the intention may have been that he should find office room for them in the place of his abode. But no general law ever has been in force for providing a lodging for that officer.

An Act of 9 Geo. III. c. 20, authorised the expenditure of county rates in the reparation of shire halls; and a general Act (7 Geo. IV. c. 63) was passed in 1827 for building new shire halls or buildings. Neither in that Act nor in the amending Acts of 7 Will. IV. and 1 Vict. c. 24, and 10 & 11 Vict. c. 28, is any mention made of an office for county records among the buildings to be enlarged or newly provided.

Local Acts were obtained by various counties for building shire halls, as 54 Geo. III. c. 175 (private) for Gloucestershire ;

55 Geo. III., Herefordshire; and others for Surrey, Aberdeenshire, Forfarshire, &c., in which provision was made for record keeping.

The Forfarshire Act (4 Geo. IV. c. 11, private) truly says that "there was no provision by law for determining by what persons or out of what funds, or in what manner the expense of providing county record rooms ought to be paid."

The Surrey Act (56 Geo. III. c. 14) states in the preamble the following weighty considerations as applicable for the establishment of a county records' office in that county.

"As the rolls and other records of the county of Surrey are become very voluminous, not only from the increase of the business of the Court of Quarter Sessions, but from the office of the clerk of the peace having become, under the provisions of several Acts of Parliament and the Standing Orders of the House of Commons, the depository of a great variety of public documents; and as the loss of the records would expose the county at large, and also parishes and individuals, to the greatest injury by the disturbance of their rights, interests, and estates."

These reasons are applicable to several counties still without record offices.

But even if a proper office were provided in each county, and the records safely housed therein, further measures must be required for providing the public with information as to their contents.

Documents in public repositories are not of the use they might be to inquirers, if there be no means of their obtaining previous knowledge of what the collection contains; when there is an absence of expectation of being able to find documents in the office, inquirers will not be induced to come and search there for what they want. For the public to obtain a proper knowledge of the contents of the repository where documents are laid up professedly for their inspection, they must have a guide in the form of a catalogue of the instruments, and an index to their contents. Indeed, without such guide, the officers themselves cannot have a correct knowledge of what

is under their charge, nor can they be checked or called to account for the neglect of what is or ought to have been in their custody.

The law recognised the necessity of indexes in regard to some Registers, as Charity Memorials, &c. But for the making of a general catalogue or index there never was any provision.

It is another requisite that there should be means to maintain the establishment for record keeping.

The remuneration of the recording officer for his trouble about enrolment, certificates, copies, &c., was by fees. The Sessions had power to fix a table of fees with the sanction of a Judge of Assize, Stat. 57 Geo. III. c. 91. But the fee table can only be applicable where the Statute directing the enrolment, &c., is silent on the subject. Very often it expressly fixes the fee, and that without much regard to other charges for the like service. Thus under the General Inclosure Act and Common Field Inclosure Act, the search fee is 1*s.*, but under the Commons Inclosure Act, 8 & 9 Vict., the fee is 2*s.* 6*d.* The fee for copies in the first case is 2*d.* per page of seventy-two words, and in the latter case 3*d.*

In some cases the Statute directs that the inspection shall be free; thus by the Test Act the rolls of persons taking the oaths of supremacy, &c., here, were hung up in some public place at every sessions, for every one to resort to and look upon without fee or reward.

Parliamentary Bills.—By 7 Will. IV., c. 83, these are open to public inspection at statutory fees. For inspection 1*s.*; for every hour after the first, 1*s.*; and for every 100 words copied 6*d.*

Such being in effect the law on the subject, the important question is, what is the actual state of this provincial Record Institute. There is not known to be any recent evidence thereon. But of old (1690), we learn by a presentment of the Grand Jury of Cheshire, that the records of the county of Chester were spoiling by the rain falling on

them, owing to the state in which the castle of Chester was in in which the courts were held. And the Select Committee of the House of Commons appointed to inquire into the state of the public records (of which Committee, Mr. Abbot, afterwards Speaker and Lord Colchester, was chairman), directed their attention, amongst other records, to those in county registries. They addressed to the clerks of the peace of the several counties a set of questions as to the several kinds of records in their custody, the state of preservation, places of deposit and arrangement thereof, what indexes there were, and what were the fees of search, &c. The Committee obtained returns from the officers or their deputies, and these returns were printed about the year 1800, in one of the large folio record publications. From these answers (which we may suppose were quite as favourable as the facts would allow), a pretty correct, though now a distant, view of the condition of the county documents may be had.

As to their state of preservation, the records of many of the counties had suffered from damp, as those of Anglesea, Carmarthenshire (except the rolls of the last twenty years), Wilts, &c. In Staffordshire they were in a bad state except those of the last thirty years. The papers of Derbyshire, of date before 1760, were mutilated. The Record Books of Montgomeryshire were tattered, with leaves torn out, &c.

The repository was commonly the private dwelling or law office of the clerk of the peace, which, from many circumstances stated, could not be deemed a fitting place.

The Record Books of Sessions' Proceedings of Oxfordshire only went back to 1761. The want of a public building for deposit is assigned by the clerk of the peace (afterwards Judge Taunton), as the cause of the loss of the earlier books. In Anglesea, all papers before 1776 had been in the hands of the clerk of the peace, but he had been dead for seventeen years before the return, and the rolls could not be found after search. They had been before that in a record room in the Shire Hall, but that place had been found to be too damp.

In Leicestershire, the repository was in a private house; but, says the clerk, a public office is indispensable. In Cambridgeshire they were kept in a private house, those prior to 1793 being in sacks. In Carmarthenshire the rolls were kept by the clerk of the peace. Upon the death of the late clerk, much difficulty was found in obtaining the records from his law office. Some were detained by his widow, who had been frequently applied to, in vain, to give them up. Those of Monmouthshire were in a small private house, damp. The repository for Northamptonshire was also private and damp. Those of Suffolk, however, came to the private house of the clerk of the peace from a worse place. They had been kept in a wooden press in a public house. In Wilts the repository was in the clerk of the peace's house, but some of the rolls were in a decaying state. The rolls of many of the counties were part in a public and part in a private repository. The books of Northumberland were scattered at three or four places. Those of Norfolk were part in the castle, part with the clerk of the peace. A more commodious room was required. The Warwickshire old rolls were at the County Hall, the later documents at the private residence of the clerk of the peace. Of the Worcestershire rolls, some were in old, broken boxes in an unceiled garret, some in militia store rooms, and some in the deputy clerk of the peace's private house, and nothing could be done for their arrangement until they were collected in some public building. The Carnarvonshire rolls had been put in a cupboard of the county kept in a house of the late clerk of the peace, but the present clerk having no room for the cupboard, would not take charge of it or its contents. Yet there was a public building that might have been fitted for their custody. The old Surrey rolls were in the Sessions House, Newington, and modern ones in the deputy clerk of the peace's office at the Temple.

Where there were public repositories, but few of them were

good. Salop had a good one. The Session House for Middlesex, at Clerkenwell Green, was perfectly secure and commodious for the keeping of records, a considerable part thereof having been built for that purpose. In Rutlandshire, the repository was a public building, but it was not secure against fire. Of the Montgomeryshire rolls, some were in the Guildhall open to the market-house, where the locks had been burst open. The West Riding of Yorkshire had a room in Wakefield Castle, but it was inadequate. The result was, that the clerks of the peace were provided with offices constructed at the public expense in twenty out of fifty-two counties. The Committee thought that this should be the case in each of them. But the extent to which this has since been done, except in the counties which have obtained private Acts for shire halls, there is no ready means of knowing.

As to arrangement, the documents were in books, files, rolls, and bundles, mostly in order of time, but some all in confusion (Herefordshire). In only two or three counties was there a complete calendar or catalogue of the public documents, or any index thereto.

In Cumberland, there was a general schedule up to 1780. In Salop a general and complete index. In Berks the records were in bags, with an index to each bag. But several of the counties had partial indexes, &c., to the records. To the books of proceedings in Kent, to some in Suffolk, to most in Derbyshire, to those in Yorkshire, East Riding, from 1711 to 1787.

Some had calendars to the several sorts of books:—Rutlandshire had an alphabetical index to some books, but none to the sessions' proceedings books. Derbyshire had an index referring to the rolls under certain heads. Cheshire had a partial register from 1778. In Dorsetshire there was an imperfect catalogue of documents deposited. But in the greater part of the counties there were no indexes, &c., to the documents, and many of the officers were of opinion that it was

useless to have any. So said the recording officer of Anglesey, for he had not had to search once in forty-seven years. The Surrey clerk said it would be of no utility to index even the Order books of the sessions. In Oxfordshire indexes would be of no good, so said the clerk of peace, afterwards a Judge. In Durhamshire no index was required. In Cornwall there was none, and it was no use to make any. The East Riding of York clerk of peace doubted the use of indexes. But there was a considerable weight of opinion in favour of catalogues and indexes. In Flintshire there was no index, but the clerk said it would be of utility, for the documents being blended together caused great difficulty to parties searching. In Montgomeryshire there was no index, but one would be of great utility. In the Radnorshire Return, it is said that the records of the Great Sessions Court of Wales wanted catalogues, as parties had to search them frequently, and the prothonotary, who resided thirty-eight miles away, charged three guineas for sending a clerk with the key to the repository, to the great inconvenience and expense of professional men. In Hampshire there was no catalogue or index, but it would be very advantageous, and assist searchers if one were made. In Glamorganshire the clerk of the peace found no index made by his predecessor, and he made none himself, but he admitted its utility. In Northumberland a general index of sessions books would be of great utility, and useless papers should be destroyed. In Notts, the clerk of the peace observed that a schedule of documents ought to be taken, and a duplicate signed by the clerk of the peace. In Herts there was an imperfect catalogue, which might be useful if made more perfect. In Huntingdonshire there was no index, but it would be of much utility to have one, as it was difficult for want of it to refer to papers. So for like reasons in like cases Devonshire, Cambridgeshire (as to books of proceedings), Wilts, Warwickshire, Carnarvonshire, Staffordshire, Derbyshire, Leicestershire, York (North Riding). In Berkshire there was none, but it would be useful for

order books. In Gloucestershire none, except of indictments, later deeds and friendly societies' articles; an index to record books would occasionally be useful; to other books it would be of no great utility. In Lincolnshire (Lindsay), and Rutlandshire it would be of great utility if the public documents were arranged and sorted; two-thirds might be destroyed, and regular catalogues made of the remainder.

The House of Commons' Committee summed up this part of the returns by this observation—"The clerks of the peace in general have no catalogues or indexes, and most of them think them unnecessary, but others strongly recommend the measure, and it appeared to the Committee that it would be desirable to have them completed as to all matters concerning inclosures, roads, bridges, gaols, and other county works or buildings, and in every case it would expedient to have one general schedule lodged to go with the records themselves in a public building, and a duplicate thereof left with the clerk of the peace for the daily use of the officer."

Nearly all the clerks of the peace agreed in considering the profits of the office of records to be of small amount. The fees fixed by many of the Acts were deemed by the clerk of Surrey too small to pay for the materials, meaning no doubt, his skilled labour. The clerk of Suffolk thought that the 1*s.* fee for registering game certificates was too low. In Gloucestershire the Deputy-Clerk said the fees averaged 20*s.* But the clerk of the peace, Yorkshire (West Riding), admitted that his fees about records amounted to between 450*l.* and 500*l.* a year. As to search fees—In Monmouthshire, and another county or two, a search might be had gratis. The most usual charge for a search was 1*s.*; as in Surrey, Gloucestershire, Warwickshire, Northumberland, Derbyshire, Norfolk; but in Notts a search cost 3*s.* 6*d.* Fees for search were in some counties so much per year, as in Cardiganshire, 8*d.*; in Westmoreland, Wilts, Dorset, 1*s.* each year. In Warwickshire the charge for search is named as 6*s.* 8*d.*, and in

some other counties higher still. A general search is probably meant. For copies great variation of fees was also shown. You might have 100 words copied for 1½*d.* in Yorkshire (West Riding); you had to pay for a folio of seventy-two words, 2*d.* in Norfolk; 4*d.* in Gloucestershire, Warwickshire; and 8*d.* in Middlesex, Notts, Derby, Anglesea. Giving certificates varied from 1*s.* Northumberland to 2*s.* 6*d.* Middlesex, Surrey, Worcester, Northumberland.

Nothing seems to have been done by the Committee on this report. But on May 4, 1813, a Bill was brought in by Mr. Holme Sumner for enabling justices of the peace to provide places for depositing county records, and also residences for clerks of the peace and for settling the fees of these officers. The reasons in favour of the Bill were the insecurity of the records in their present state, and their great importance to the property and the interests of many. The Bill was opposed by Mr. Westorn, on the score of expense, and it seems to have been let drop. Ought it not to be revived? If the social life of a people is to be traced in its institutions and ought to be learnt, the repertory for the facts concerning them is the genuine source of instruction, and ought to be maintained and improved.

What a body of information must there not be contained, and what lessons of experience derivable from the books and accounts of administrators, who set down with business-like and judicial accuracy their acts in the management and dealing with institutions and concerns of interest and importance! What incidental information also of the state and circumstances of the localities at different dates, as well as the condition of the institutions themselves! What an amount of local historical matter might be gathered from the entries in the ancient Record books of sessions' proceedings! These in some counties go back to the sixteenth century—those of Cheshire, and also those of Westmoreland, beginning 1559; those of Wilts begin 40 Elizabeth; those of (North Riding) Yorkshire, 1600, and those of Devonshire

same date; those of Notts from Jac. I. The ledger books of Somersetshire go back to 22 Car. I., and they had some earlier in mutilated condition; and even the most recent session books, as of Surrey (1759), Cornwall (1758), Oxford (1761), Berks (1760), furnish the experience of upwards of a century.

When these things are properly considered, it cannot be well doubted that the project for obtaining a proper place for depositing and preserving county records, with provision for their safe custody, and for the easy and convenient access by the public to them should be resumed.

It is desirable that a general catalogue should be made and published of the public documents of the county, by which its inhabitants would be apprised of the nature and extent of their public records: and the clerk of the peace would know the particular documents for the care whereof he is responsible, and by this means a greater degree of attention would be insured to their security and preservation.

It is also desirable that particular indexes should be made to every description of the public records and documents belonging to the county, in order to facilitate the reference thereto by persons having occasion to examine the same.

As to the cost of such establishment, it is desirable to avoid undue increase to public burdens, but there are some things in the way of set off to the necessary expenditure which deserve consideration, as they would tend to its self-support. In counties where the fees of the clerks of the peace are commuted for a salary, the search fees, &c., make on the profit side of the accounts almost the only item, and hence perhaps it is not much regarded. The apostolic maxim about giving and receiving strongly holding where it was never meant to apply, the dealing with public, that is, other men's, monies.

The more rich a county collection is in extent and variety of its records, and the more facility given to their use, the greater the resort of inquirers to the office, and the amount of fees arising from their searches would be.

With a view to encourage resort thereto, a greater uniformity of search and other fees should be established.

In regard to the most important class of documents deposited in the office of the clerk of the peace of counties, namely, Inclosure Awards, facilities should be given for the completion of the collection. The incompleteness has arisen from various causes. Some of the older Acts contain no direction for emolument, and in other cases the directions for that purpose in the Acts have not been complied with for want of funds and other causes, the awards lying in the state of engrossment in hands of solicitors or surveyors claiming liens thereon for fees, or still remaining unengrossed and imperfect.

All awards upon future inclosures should be enrolled with the clerk of the peace, and the option of enrolling elsewhere taken away. Steps should be taken for obtaining transcripts or copies of awards made under Inclosure Acts for places in a county and enrolled elsewhere (as at Westminster, under the General Inclosure Act, 1801), such transcript to be put with the county records. This, in some cases, would, however, be attended with expense, which, to some extent, might be met by the profit of additional searches and copies.

In order that outstanding awards should be brought on for enrolment the provisions of the Stat. 3 & 4 Will. IV., c. 37, should be much better known, thereby, persons entitled to lands, affected by awards, may require that they be enrolled by the clerk of the peace. The expence, however, lies on the applicant. It should be mitigated by reduction of fees in such cases by the county authorities. Resort should also be had to the provisions of the Commons Inclosure Act, 8 & 9 Vict. c. 118, for the completion of delayed awards, and for revival of the powers of Local Inclosure Acts, lapsed by death of the commissioners or otherwise, so as to complete the proceedings.

Inclosure awards are often made in duplicates or triplicate. One copy to be deposited in the parish chest, or with the

largest proprietor, or the like. The parish chest is not always a good repository. Awards, so deposited, often suffer from damp and neglect, and it sometimes happens that the inquirer after an award, which ought to be in the parish chest, or in the hands of the lord of the manor, &c., is disappointed in his search. It is not to be found in its place, and he cannot always ascertain where it is to be found. When found, the facilities for search, which the county office affords, are wanting, and the compensation to be paid to the keeper for the trouble of producing the award, not being fixed by law, may become the subject of misunderstanding. These considerations show the importance of preserving and augmenting the county collection, and lead to the suggestion that where a parish has not fit accommodation for keeping its award, it is the more desirable that the same should be enrolled or deposited in the office of the clerk of the peace, according as its Act may direct.

In conclusion, some collateral or further uses of a County Record Office may be adverted to.

The Record Committee of 1800 were led by their inquiries, to recommend a registration of public instruments relating to land, and they suggested that registers for real property assurances might be wisely established, on the model of the Middlesex and Yorkshire registries, in counties—in effect a revival of the Tudor law of enrolment.

The Yorkshire (West Riding) Act professes to supply the defects of the old Statute, in that it had not appointed a place for keeping of the enrolments, nor provided sanctions binding enrolling officers to their duty.

No doubt it was susceptible of improvement, but it is a question whether a county registry might not be brought to a state of greater perfection than a central or general registry.

In the late inquiry before the Committee on Voters' Registration, a witness from Yorkshire stated that the registry of his Riding was so well kept and entered up, that the state

of a particular title on it might be readily learnt by letter or telegram. The advantage of a county register of property in relation to the correcting of the register of voters was also proved before the same Committee.

The question between central and local registration is still a point of contention, and in which question the claims of local over central registration can never be urged with due force, while the present imperfect arrangements respecting county records continue.

Record offices should be large enough to allow of a proper staff of officers, and proper and safe repositories and convenient accommodation for searching; but when those requisites can be secured, the claims of provincial over central are considerable. The spirit of local investigation should be encouraged by affording facilities on the spot to those whose aim is diligently to learn from authentic sources, facts tending to establish private and public rights, and illustrate antecedent institutions and manners.

To London now go returns of friendly societies, charities, and some other local institutions formerly kept in the County registry; and to London, it is said also, are destined to go the collections of wills and the like records. In the case of charity returns, it is matter of experience that the law for their deposit in the country offices worked beneficially, inquiries being often made by persons interested therein; whether they are of equal use in the central repository of the Charity Commissioners in London may be doubtful.

This project of centralisation is, moreover, fraught with danger to the preservation of the records, as they would be exposed to the attacks of enemies from within and from without. Cade's policy of "burning all the records of the realm" commends itself to revolutionary minds, and as to foreign hostility, we plainly see that modern scientific warfare seeks the destruction to the enemy, of life without measure or discrimination, and of property, however purely conducive to the interests of peace, and civilisation. The county authorities

on their part should reflect that it is wrong to lend to the movement for transferring local collections to a central office, the aid which is furnished by manifest neglect or indifference of local keepers to the objects of their charge.

In connection, though not necessary connection, with this, the county office might usefully serve for a repository of derelict deeds. In his book on Abstracts (Vol. I. p. 28), Mr. Preston, the late celebrated conveyancer, observes:—

“ Deeds and even wills are sometimes found in the hands of those who represent the stewards or the law agents of the family of the former owners, or of the gentlemen who have succeeded to the professional concerns of such law agents, &c.

“ It would tend greatly to public convenience by facilitating such researches, and be a profitable appointment to any individual, that all deeds, wills, &c., left or found in the hands of persons who have no connection with the property or with the owners, or a table of their dates and the names of the parties, and the description of the parcels, should be deposited in some public office. The existence of such office would soon give it abundance of employment.”

Since Mr. Preston's time, the practice has arisen of casting aside deeds which do not enter into a short title, or are displaced by a certificate of title. This adds force to the proposed means of securing them from destruction, and keeping them out of the hands of those whose dealing therewith may produce profit to themselves but injury to others.

Persons going to the colonies or foreign parts are often embarrassed with the difficulty of knowing how to dispose of their deeds and wills in their absence. The county office might be made a useful place for such deposit.

The Real Property Commissioners of 1832, in their string of questions on a general register, asked whether the registry office might not be used for such deeds at the option of their possessors, or at the suit of owners of partial interests or in satisfaction of covenants for their production.

The respondents agreed upon the usefulness of having a public place for the reception of such documents, but it was

doubted by some of the most experienced witnesses whether it should belong to the proposed registry office. Mr. Bell thought it a distinct matter. "If you choose to make a distinct office for depositing deeds, that may be a very different question." To the above questions Mr. G. Harrison answered—"No; let the register be as fresh as the new and as bright as the full moon without any mist upon it." "It might be very convenient, particularly if there were county registers, to have an office where people could deposit their deeds and wills, but it should be no essential part of the registry office." That service might be remunerated by moderate fees.

ART. IX.—AMERICAN LEGAL NOTES. By AN
AMERICAN LAWYER.

AN inclination to investigate the laws of other countries, and to institute a comparison between them and the Common Law, is a trait of the English lawyer as marked as it is recently acquired. The works upon the Roman law which have been published by English barristers within a few years, attest the strength of the impulse, and the establishment of the *Revue de Droit International et de Legislation Comparée*, by an English publicist of high standing, in conjunction with continental jurists, is a sign of the drift which modern professional opinion is taking not to be mistaken. It is but natural that with this prevailing disposition, the American law, which is merely a graft upon the English stock, should receive special attention, and no one who handles the law reports can have failed to remark the frequent citations from American text-books and reports in the arguments of counsel and in the decisions of the Courts. As it is of the utmost importance for the development of law that the disposition thus evinced to cultivate comparative jurisprudence should be encouraged, and as it is grateful to an

American lawyer, who has grown up in the quaint realm of Coke, to feel that his title to fellowship in the common heritage is recognised, and his labour appreciated, it is proposed to facilitate the incipient professional intercourse, by giving occasionally in the *Review* a summary of the current events in the United States, which, being strictly confined to professional topics, may be instructive and interesting to English lawyers.

A topic at present in common between the two countries is the revision and consolidation of the Statutes at large, and the feasibility of a digest or code of the Common Law. Experiments of each kind have been made without number in the United States, and new ones are now on foot, with more or less chance of enactment. It is a vital question for the English legislator to understand the effect of the attempts which have thus far been made, in order to act intelligently upon the subject which has already been forced upon his attention. The gravity of the project arises from the irrevocable nature of the change, were it once introduced and carried out. No return to the old system would be possible, after a generation of lawyers had been educated under a code; the connection with the antecedent law, except so far as reference to it might be contained in the code itself, would have been finally severed. A race of lawyers unacquainted with the system, history, and traditions of the Common Law, would have taken the place of the class which now makes that law the subject of its life-study. The inducement to master a scheme so complicated would have been taken away, and none but a legal antiquary would trouble himself about the superseded machinery. It is the failure to apprehend and realise the break with the past, which is involved in a code, that stamps its advocates with superficiality. Thus Mr. Field, of New York, who was mainly instrumental in procuring the adoption of the New York Code of Procedure, has recently published a letter, dated November 28, 1870, addressed to several members of the California Bar, in which he exhorts

them to aid in effecting the enactment of civil, penal, and political codes, in addition to the codes of civil and criminal procedure, which California has already adopted; and the argument which he advances, and upon which he relies as conclusive in favour of a code, drawn from his experience in New York, is that the opposition which manifested itself at first vigorously to the New York Code of Procedure has gradually diminished, and has now almost terminated. This unavoidable acquiescence he considers a silent acknowledgment by the opponents of codification that they were mistaken in their first judgment upon the Code. Could fatuity lead one farther astray? The explanation of the reason which induced the Common Law practitioners to discontinue their hostility is as simple as it is natural. To prolong the struggle would be futile. The younger members of the Bar, a constantly increasing number, have been instructed in the code, but are unacquainted with the Common Law practice, and, should the code be repealed, they would be compelled to begin their legal education anew, and, during the interval of study, be incapacitated for practice. The new generation of lawyers which has come to the Bar within the last twenty years comprises the vast majority of the present practitioners, and the combined influence of this new race precludes any reconsideration of the question. The body which should be free to deliberate upon the procedure which it ought to adopt receives such a set and bias through its interest and one-sided knowledge, that it is incapable of arriving at a just conclusion. Is the opening of an abyss which isolates us from the accumulated stores of past generations to be heralded as an advance? As well might the capital of the world be destroyed at a blow, on the pretext that we might begin afresh, unencumbered with antiquated rubbish.

But what is the practical result of the New York Code of Procedure? If the opinion of the leader of the Bar, a lawyer, not of clap-trap fame, but of thorough erudition and training, is desired, it may be found in the first volume of the *Albany*

Law Journal, page 302. Mr. O'Connor shows that the framers of the Code, in attempting to simplify the practice, succeeded in producing confusion; and the exclamation of Mr. Field, that our law is a chaos, applies, as all will admit, to his pet subject of simplification, the practice of New York. Mr. O'Connor, after mentioning that the Code requires the facts which the evidence tends to prove, but prohibits the evidence itself or the conclusion of law from the facts to be pleaded, says, "It requires somebody much more wise or more subtle than myself, or any special pleader I have ever been acquainted with, to define or find out what it is that should be stated in a regular pleading drawn in compliance with this requisite of the Code. I am not aware that any one has ever attempted to do it. The common practice in this State is, to tell your story precisely as your client tells it to you, just as any old woman in trouble for the first time would narrate her grievances, and to annex, by way of schedules, respectively marked A, B, C, &c., copies of any papers or documents that you may imagine would help your case. This is most emphatically a fair description of all the pleadings which come from the office of the chief codifier himself. A demurrer to any pleadings under the Code is a very dangerous slip, because it is utterly impossible for the keenest investigator to determine, in most cases, what any other reader than himself will understand to be the import of the pleading if it be demurred to."

The United States' Bankrupt Act of March 2, 1867, was meant to embody the results of the English decisions and Statutes. It was prepared by a lawyer of eminent ability, Mr. Jencks, of Rhode Island, who thought he had simplified the subject to its last elements. But the attempt is a failure. It would have been far simpler to have incorporated the English law as it stands, just as English Chancery jurisdiction is conferred, in some States, upon the courts. Multitudes of cases have already sprung up to test the meaning of the enactment, and twenty years and a hundred volumes of reports

will be necessary to reduce the interpretation to an intelligible basis. The English cases, instead of being any help, are armouries out of which the lawyers equip themselves, to fight the controversies out anew. The forms of procedure, which were proclaimed as models of simplicity, are more cumbrous than any of the old real actions at Common Law. This is the last example of codification, though there is at present a Commission sitting daily at Washington to revise all the United States' Statutes, and the Commissioners to revise the Parliamentary Statutes have recently published their draught of the *Revised Statutes*, which they recommend the legislature of that State to enact.

The old question, "Who is wiser than the wisest man?" and the answer, "All the world," bring out the relative superiority of the Common Law over any code. A few individuals, no matter how able or erudite, cannot expound the law in all its departments in detail, and no generalisation, unless made with a clear view of all the instances that might be comprehended under its terms, would be an adequate expression of the law, which it attempted to epitomise. As the law now stands it resembles a natural science. Every lawyer in the kingdom and in the colonies, and in most of the United States, so far as he is able to elucidate any one section of the entire body of law, contributes to the work of simplifying the system. Nor is this aid a trifle, like the investigations of the naturalist in remote quarters of the globe; it often illuminates the subject, and gives the clue for a philosophical classification, which is final, and not only puts an end to conjecture in that department, but reflects light upon the entire inter-dependent system. An illustration will make the meaning clear. The subject of General Average has attracted a great deal of attention in England and on the continent of Europe. The propriety of calling an international congress, in order to enact a code upon this subject, has been advocated (XVI., *Law Magazine*, 322), and numerous other suggestions have been made to settle artificially this single principle.

Fortunately no such straight-jacket was ever put upon it, but it was left as it is, embodied in the precedents. A man with a mind of diamond-like clearness, and of first-class magnitude, found the question involved in a case which arose in his practice in Ohio. He applied himself to the investigation of the subject, and mastered it. His treatment of the doctrine is as finished a piece of analysis as can be found in legal literature. It is published as a note to *Johnson v. Chapman*, in the American edition of 19 Common Bench Reports, N.S., 583. Let any one who desires to witness the process by which the Common Law is simplified examine the Hon. R. P. Spalding's argument on General Average.

The accumulation of reports requires, it is true, a digest of all the cases which continue in authority, in order to render the vast bulk of precedents accessible. Reference to the digest itself may be facilitated by indexes, which should give the points of decision without any statement of facts, and by a logical analysis which should display the inter-dependence and coherence of the entire system. But this must be in aid, and not in exclusion, of the present law. The moment a digest becomes an authoritative exponent of the law, *its* version is substituted for the original, and as the language of the summary is authentic, its interpretation takes the place of the decisions, which it supersedes. The work once completed must be done over again, and in a method always imperfect because of the inadequacy of language to convey with perfect precision the thought of the writer. The clever description of President Lincoln's message: "Thought struggling for expression," is true to a greater or less extent of all languages. This *Review* has already explained the difficulty in Volume XVIII., p. 322, at length.

Reports multiply in the United States with alarming rapidity. Each State has its regular official reports of, on an average, three or four volumes a year, which are limited to cases decided in the highest State tribunal. The decisions of the lower courts are also frequently reported, and in the

large cities these local reports accumulate in unexampled numbers. Thus Barbone's Reports of one district court in New York number fifty-six, all published since 1848.

A volume of the Pa. State Report has just been issued, December 30, 1870, being No. 62 of the present series, but No. 126 of the entire set of the Reports. It contains a case, *Pa. R. Railway Company v. Kerr*, p. 353, which at first sight seems to conflict with *Smith v. London and South Western Railway Company*, L.R., 5 C.P. 98, but in reality differs widely from it. The sparks from a locomotive set on fire a warehouse situated near the track, and from the warehouse the fire was communicated to a hotel thirty-nine feet distant, which was consumed with its contents. Suit was brought against the railroad company for damages suffered by the destruction of the hotel, and they were recovered in the court below; but the supreme court reversed the judgment on the ground that the ignition came from the warehouse, and not directly from the locomotive. A secondary cause operating through and by means of an intervening cause is too remote to create liability. In *Smith v. London and South Western Railway Company*, heaps of hedge-trimming were left by the servants of the railway company near the track during a season of unusual dryness, and caught fire from the sparks of a passing engine. A high wind swept the fire across a public road and stubble field, and set fire to a cottage 200 yards off. The plaintiff recovered compensation from the railway company for his goods which were burnt up in the cottage. The court held that there was negligence on the part of the railway company in leaving the dry heaps near the track during such a season. Had the warehouse in *Pa. R. Railway Company v. Kerr* been the property of the company, and had it been negligently erected so near the track as to be in danger of ignition from passing locomotives, the direct and intermediate cause would have been consolidated into one immediate cause attributable to the railway company; the erection of the warehouse would then

have been viewed as a piece of negligence which resembled leaving the heap of hedge-trimmings in a like exposed position.

Clark v. Douglass, p. 408, turns upon the conclusiveness of a judgment. A defaulter joined with his wife in executing a mortgage of her real estate to his surety for the uncertain amount embezzled, and they subsequently confessed judgment for a sum which they liquidated as the indebtedness. On a feigned issue between the creditors and the surety the record did not show what issue had been tried, but the Court said the only question which could have been presented to the jury was collusion between the defaulter and wife, and the surety to defraud the creditors. The creditors offered to prove that the defaulter paid the surety 12,000 dollars over and above the debt to compound the felony, but the offer was overruled, on the ground that though this was collusion to defraud the Government, it was not collusion to defraud the creditors; as to them it might have been a matter of defence, which was concluded by the judgment. To impeach the judgment on any ground except collusion would be illogical, as otherwise it would stand as to the defendant in it, and at the same time be void as to the creditors. But query? for if a man with an intention to commit a fraud does an act which, if coupled with the guilty intention, would amount to a different fraud, is not the intention joined by law to the act in order to establish the fraud? At the Common Law, if a man shot at a dog, the property of another, and in so doing killed a human being, he was guilty of murder. In the above case the argument is *à fortiori*, because the act is the same, and may be viewed as a fraud with a double aspect, if the party is not allowed to define his own guilt.

Schurertz v. Shreeve, p. 457, decides that the implied power of a partner to bind the firm by an executory contract does not enable him to do the same thing by an instrument under seal. The seal alters the character of the liability created; it implies a consideration, and takes away the period

of limitation. An agreement by one partner for his firm to deliver petroleum was held not binding in consequence of a seal being attached to the signature. *Edwards v. Tracy*, p. 374, adheres to the law as it stood in England before *Cox v. Hickman*, 8 H.L., 268, and *Bullen v. Sharp*, L.R., 1 C.P., 86. The agreement was that one firm should receive a commission on the sale of goods commissioned to them by another firm equal to one-half of the profits, and should be liable for one-half of the losses. According to the old distinction that a commission equal to one-half of the profits is a very different thing from one-half of the profits, it was decided that a partnership did not result from the agreement. *Guremeyer v. Southern Mutual Insurance Company*, p. 340. The insured sold a mill, and took a judgment for the balance of the purchase-money. By the sale he lost his insurable interest, as the judgment is not a specific lien. And *Peel v. Elder*, p. 308, decides that adultery, unless accompanied by voluntary separation from her husband, does not bar a wife of dower under the Statute of Westminster, 13 Edw. I. c. 1, s. 34. Elder abandoned his wife and removed to Tennessee, where he obtained a divorce. It was invalid, however, as the wife's domicil, being distinct from that of the husband in proceedings for a dissolution of matrimony, remained in Pa., and the Courts of Tenn. had no jurisdiction. During his absence she cohabited with one Pickel. On his return he remained with her a short time, and then left her and married another, and it was during the second marriage that he conveyed the property to Peel. The wife's indiscretion was induced by the husband's neglect, and the Court saw no reason to deprive her of dower.

ART. X.—NEW BOOKS ON ROMAN LAW.

The Commentaries of Gaius. Translated with Notes, by J. T. ABDY, LL.D., Regius Professor of Laws in the University of Cambridge, and BRYAN WALKER, M.A., M.L. Cambridge: The University Press. 1870.

A Compendium of the Modern Roman Law. By FREDERICK J. TOMKINS, Esq., M.A., D.C.L., and HENRY D. JENCKEN, Esq. London: Butterworths, Fleet Street. 1870.

The History of Roman Law, from the Text of Ortolan. By ILTUDUS S. PRICHARD, Esq., F.S.S., and DAVID NASMITH, Esq., LL.B. London: Butterworths, Fleet Street. 1871.

NO subject is more interesting to those who have taken interest in the movement, which has gone on of late years, for providing a higher legal education than the attention which has been given to Roman law and jurisprudence. It was lately shown in these pages,* that in England the civil law began to be studied at an early time. But this promise was not fulfilled. The study of Roman law, which on the continent never ceased until its influence culminated in the production of the French code, never took a deep hold in this country. On the continent, lawyers who were bewildered with the technicalities and the multiplicity of forms of their own systems, turned their eyes to that of ancient Rome, as to one which presented examples of order, method, and elegance. They found their own systems encumbered with legal forms. They saw how that of Rome had been so encumbered; but they saw also how the legal genius of the Latin race had shaken these encumbrances off. They saw instead, an appeal to intention, law looking to the spirit and not to the letter merely, the application to cases under dis-

* See article on Vacarius.

cussion not of mere technical rules, but of a few simple principles, to which any number of cases might be referred. They saw confusion in their own forms; laws in one district, or in one town, differing essentially from those in another; ceremonies so complex, that they almost hid the nature of the transaction they were intended to evidence; and laws in such variety that it was impossible that any one person should be acquainted with them. But in Roman jurisprudence, order reigned instead of confusion; and the law was not only common to all Romans, but was a true common law of races, a *jus gentium*, which had seemed even to the Romans themselves so characterised by simplicity and equity, that they had come in later years to regard it as a *jus quod naturalis ratio docuit*, a true *jus naturale*. Cumbersome ceremonies had not been allowed to obscure that which they evidenced. Intention had been everything, ceremony nothing.

It is not, therefore, to be wondered that continental lawyers, and especially French lawyers, should have looked towards Roman law almost as an object of affection, should have regarded it as an unattainable model to be imitated, have believed that it had been divinely inspired, have considered its decision final upon any question on which it had pronounced judgment. There came a time, as Professor Maine has pointed out, when the mass of the community came to be influenced by the *jus naturale* and its teachings. The doctrine "passed from the forum to the street." The lawyers' belief in the system of Equity, of which they had gained glimpses, had spread among educated men, and when at length the law of nature came to be accepted as a reality by Jean Jacques Rousseau, all France, and after her all Europe and civilised America, followed his example. It is true that the new law of nature was not the old *jus naturale* of either Gaius or Ulpian, and that it was still more unlike the old *jus gentium* of early Roman jurisprudence; but as the law of nature of the later jurists had grown naturally from the old law of nations, so the law of nature of Rousseau and

the writers of modern times had sprung naturally from the *jus naturale* of the classical jurists. Rousseau spoke of man as being in a state of nature—the ancients as governed by the law of nature. When the classical jurists pronounced that *jure naturali omnes homines æquales sunt*, they meant that looking at men by the light of the theory of the law of nature all men before the law were equal; the distinction, for example, between debtor and creditor, between citizen and *latinus*, between *paterfamilias* and one under his *patria potestas*, in the eyes of that law had ceased to exist. But when Rousseau and his crowd of imitators in Europe and America declared that all men are equal, they meant that all men *ought* to be equal, and they enforced their argument by the assumption that in a state of nature all men would be equal.

What modern literature and modern civilisation owe to Roman law, and especially to the theory of a *jus naturale*, it is almost impossible to over-estimate. Probably our own law owes less to it than that of any other country, and there can be no doubt that the weak points of our legal literature are exactly those which would have been improved by a more thorough acquaintance with Roman law. Our system of Equity jurisprudence, which in its doctrine of trusts, of fraud, accident, mistake, mortgages, and other portions, has been built upon the principles of the great classical system, has formed a body of law, the existence of which has rendered the working of our old Common Law system possible. To Roman law modern Europe owes also the system of international law, a system which borrows its first fundamental assertion, that all nations are equal, directly from the *jus naturale*. With most of the European nations, and in the States of Southern America, in the province of Lower Canada, and in one of the United States (Louisiana), Roman law constitutes the principal basis of their unwritten or Common Law. We have already said that it has had much to do with the formation of our own Equity system, while

in the jurisdiction of our Admiralty Courts its influence has been still more direct and exclusive.

"Roman law," says Chancellor Kent, "is now taught and obeyed not only in France, Spain, Germany, Holland, and Scotland, but in the islands of the Indian Ocean and on the banks of the Mississippi and the St. Lawrence." On the ground, therefore, that Roman law is the basis of the jurisprudence of the civilised world it is well worthy of study. But it has other claims to recommend it. "Next to the writings of the geometricians," says Liebnitz, "there is nothing which in force and subtlety can compare with the Roman law." But even Liebnitz and the great men of his generation had not such opportunity of becoming acquainted with this subject as the labours of the eminent jurists of Germany have enabled us to have. At no previous time since the great school of Roman jurists passed away has the subject been so thoroughly taught and systematised as it is at present in both Germany and France. In England, unfortunately, it is only within the last few years that anything has been done towards providing a course of training in Roman law. Until the appearance of one work which we have named at the beginning of this notice (*MODERN ROMAN LAW*) no complete systematic treatise on the modern civil law has appeared in English. The language is indeed destitute of any treatise whatever on the subject of Roman law which will bear comparison with any one of fifty works produced on the continent. We have been almost altogether dependent on translations and adaptations for anything worthy of the name of explanation or commentary, even on the "*Institutes of Justinian*." Four years ago a student was utterly unable to get the slightest assistance in English either in the form of translation or explanatory note of the "*Commentaries of Gaius*." He had to get through the original Latin with all its technical words and phrases in the best way he could, blundering on until he discovered by native wit that words which he

had learned to recognise in Cæsar or Cicero as having one meaning had quite another, and, so far as his dictionaries were concerned, an unnoted meaning here.

This difficulty will be met by the translation of Gaius, by Professor Abdy and Mr. Bryan Walker. The student has before him in this edition the original text, in its clear, manly Latin, side by side with a rendering in English. On each page are a number of carefully prepared notes, explaining to the student the difficulties of the text, with the meaning of technical words (his greatest difficulty at the outset), and giving such historical notices as are requisite for its elucidation. The edition is a very clear and definite gain to English legal literature; is, in fact, almost a model of what such a book should be. At first we were inclined to take exception to the use of the old form "hath" for "has," but as its use is not general throughout the book, the subject is hardly worth speaking of. In one or two places the translation might, we think, have been in simpler English. Professor Maine's translation of *Is emptus est hoc ære aeneaque libra*, "I have bought him with the copper and the scales" is preferable to (although not so literally exact) "he has been bought by me by means of this coin and copper balance," which is the way the passage reads in Professor Abdy's translation. These, however, are mere matters of detail. The great point to be noted is that this edition is carefully annotated, and possesses a faithful translation. As a student's edition it could hardly be better.

Both the books we have named open up to Englishmen an entirely new field. Our fathers, of course, knew nothing of Gaius till the fortunate discovery by Niebuhr of the famous palimpsest. As one reads its wonderful pages, stumbling at every few lines on lacunæ, denoting where some wretched monk has succeeded in effacing the legal treatise to make way for the probably wretched trash which covered it, it is impossible not to feel that without Gaius a comprehension of the spirit of Roman law, of the history which has

made Roman law what it is, was impossible. His wonderful glimpses into the legal history of his country, his descriptions of the ancient *legis actiones*, his account of the *mancipatio*, and of other old ceremonies, all throw a light on ancient history, probably clearer than that which has been shed by any other ancient author. In point of clearness of perception of what he was writing about, Gaius excels even all Roman jurists. The editors of the present translation think, and with good reason, that his commentaries are to be regarded rather as a book of practice than as an institutional treatise. Whether this be so or not, there can be little doubt that a work so complete in itself, giving a comprehensive view of the whole body of Roman law, clear and precise in its definitions (take for example, his sections on theft, and the difference between *furtum manifestum* and *furtum nec manifestum*), and yet so short, must have been used as a text-book for instruction in law. That it was so used is of course rendered the more probable from the facts that Tribonian selected it as the model for the formation of the "Institutes of Justinian," and that whole passages are transferred bodily into the latter from the former.

We have said that two of the books named at the head of this notice open up new fields to our legal students ignorant of French and German. To the third book, "Ortolan's History of Roman Law," translated by Pritchard and Nasmith, the same remark will apply. The present writer had occasion some years ago to wish to make himself acquainted with Roman legal history, and for this purpose took the trouble of examining the wonderful manuscript catalogue at the British Museum. He was unable to find a single work on the subject; and believes that none such has hitherto existed in the English language. In one or two works, as in those by Colquhoun and Graepel, he found a few pages on the subject, but these were generally imperfect. Anything, however, like a history of Roman law in English was not to be found even in that huge storehouse. We can

therefore give a welcome to this translation of Ortolan as cordial as we have extended to each of the two works named. Among those who have made Roman law a subject of study, M. Ortolan's name stands in high estimation. His "Institutes of Justinian" are a model of what such a book should be. In England, undoubtedly the best known work on the same subject is a translation from Ortolan, with substitutions, adaptations, &c., which justify the author in not calling it a translation. But in our opinion, in spite of the considerable ability which has been displayed, the work to which we are alluding does not approach in excellence to that of Ortolan. The latter author is especially successful as an elementary writer. He cares nothing about repetition. He summarises admirably. He brings out the points of importance, recapitulates wherever necessary, and adds at the end of each important division a *resumé* which is invaluable to the student from the careful way in which all the points of the preceding chapters are gathered together. We know of no book which in our opinion exhibits so perfect a model of what a text-book of law should be. Story could probably have given us a work on Equity jurisprudence framed on the same model; but nothing we yet possess in English can be compared as a book for legal education with Ortolan. His work on Roman law is now the text-book in the London University. It consists of three volumes, the second and third being devoted to a translation of, and explanation or running commentary on, the "Institutes of Justinian." The first volume consists of an "Histoire de Législation Romaine," and of a "Généralisation du Droit." It is this volume (which as will be seen from the title is complete in itself) that Mr. Prichard and Mr. Nasmith have translated. We have already expressed our opinion on the original work as a whole. In some respects the first volume of Ortolan is however the most valuable of the three. It is possible to gain elsewhere fair commentaries on Justinian's text, but Ortolan's excellence as a teacher and as a writer profoundly acquainted with

Roman law at its sources, as well as with the writings of modern German and other jurists comes out especially in the History and Generalisation. Besides which, it should never be forgotten that Roman law ought always to be studied in connection with its history. Nothing better shows the spirit of that law than a comparison between certain institutions as they are described in Gaius, and as we have them finally set forth 300 years later in the Institutes of Justinian. By the aid of such a comparison we can see the principle on which improvements were made, and by the light of subsequent experience can point out pretty certainly what direction of growth the law would have taken in subjects which were not fully developed even in Justinian's time. But, without a knowledge of Roman legal history, the subject becomes to a great extent one of more or less dogmatic teaching. The mistakes made through ignorance of such history are sometimes ludicrous. We recently heard a divine of some eminence inform an audience that the Roman law did not allow a citizen to make a will, *because* it was not until the time of the Twelve tables that such permission was given; a statement which, to say nothing about its inaccuracy, is about as reasonable as to assert that trial by jury or a writ of Habeas Corpus are not English because not mentioned in the code of Alfred.

Ortolan's definitions are master-pieces, and his explanations leave nothing to be desired. Of the translation before us it is enough to say, that it is a faithful representation of the original. There are a few places where the exigencies of translation have pressed hardly on the translators, as, for example, in their definition of one of the meanings of *persona*, "every being considered as capable of having or owing rights,"* &c. The original is, we believe, *capable d'avoir et de devoir des droits*, an expression singularly neat but incapable, as our readers will see, of being readily rendered into English. The word *droit*, like the German *recht* and the Latin *jus*

* Page 567.

signifies duty as well as right, just as in old English the word right, still commonly used in this sense in the north of England, as in, "He has a right to make it good," meaning, it is his duty to make it good, had the double meaning. These are small blemishes, for which the language is responsible and not the translators. In one respect we could have wished that the translators had imitated M. Ortolan;—in the cheapness at which his book is published. The three volumes, containing upwards of 2000 pages, are brought out in Paris for 22½ francs. It is true that the French edition is on that thin blotting paper with which we are all familiar in French books, and that it is ill stitched, and in paper covers. But, on the other hand, we get for less than nineteen shillings a mass of matter in good type such as in England we could get in no law book whatever under at least two or three times that amount. At the same time, it is only just to Mr. Prichard and Mr. Nasmith to say that, comparing their books with other English law books, it is singularly cheap at the price. As a mere specimen of publishing its get-up is admirable and is a credit to Messrs. Butterworth. The same remark will apply also to the *Modern Roman Law* of Messrs. Tomkins and Jenckens. Ortolan's *History* is furnished with a chronometrical chart, which will be of great use to students of Roman legal history, and for which its readers are indebted to Mr. Nasmith, whose admirable chart of English History is well known.

The question of what proportion of time ought to be devoted by the English law student to Roman law is one which is too wide to be discussed on the present occasion. We, however, cannot refrain from expressing our regret that in the course marked out by the Council of Legal Education, a greater share is not given to it. One Reader takes international law, jurisprudence and Roman law. Dr. Tomkins may well regret that no time is given to modern Roman law, but we plead for more time to the general subject. The educational term contains, we believe, about twenty lectures,

and there are three such terms in the year. The mere statement of the case is sufficient to show that the time devoted is too short. While on the subject it is impossible to refrain from expressing our very cordial agreement with the authors of "Modern Roman Law" in their remarks on the necessity of an improved style of lecturing. Our readers must have fresh in their memory what was said in these pages, by another writer, of the lecturing of Von Vangerow. Such lecturing is of immense value, but a lecture on any legal subject, which is a mere formal reading, is simply a waste of time. A student can still make more progress in almost any subject of study with the aid of a tutor than solely by the aid of books, provided the tutor does not attempt a formal lecture. Mr. Haynes has published his admirable lectures on Equity before the Incorporated Lay Society, and very useful and even pleasant reading they form for an Equity student. But it is surely better that he should have them before him in a printed form, in his own chambers, so that he may read a sentence again, and get a complete grip of the whole subject in the exact words of the lecturer, than that he should have to make, possibly, many long journeys to hear them delivered, and come away with a few imperfect notes.

We are not prepared to say that lectures may not be useful. There are men at the Bar who have paid attention to special subjects, who are full of curious knowledge on particular points, and whom a considerable number of the profession would be glad to hear. These men have gathered information from a great variety of sources and are possibly averse to writing. In any case, such information as they have to give can be more pleasantly received *viva voce* than from reading, even though the lecturer himself can be induced to commit his researches to paper. But the case is altogether different with a student of elementary law. It is not merely that he has to waste time in attending lectures, and any one who has had experience in attending the lectures of the Council of Legal Education, or who will take the trouble to

examine the time table of their lecturers will see what a large amount of time is wasted, but it is that when he has reached the lecture-room he will hear in many cases worse matter than he could have read at home. The truth is, that the old system of lecturing is a mere remnant of the mediæval university system, and requires now very material alterations to adapt it to modern wants.

We have been led into these remarks by Dr. Tomkins's observations on the importance of an attempt being made by a lecturer to do something to evoke the sympathy and arouse the ardour of his pupils. His remarks apply with special force to the teaching of Roman law. This subject, in England at least, has been so little treated of that the beginner will for a long time find invaluable help from attendance at lectures, if the lectures are of the right kind.

Of Dr. Tomkins's book it is impossible to speak at any length. But we commend it earnestly to those who wish to make themselves acquainted with Roman law as it exists to-day. Roman law has never ceased to be a system in actual practice. The barbarians who conquered the Eastern and Western empires were in turn conquered by the legal genius of their captives. The codes of the victors, incorporating usually a good deal of customary law pertaining to the conquering races, were yet in the main Roman. Those of Theodoric II. and of Lothair, the *Lex Romana Visigothorum*, the *Breviarium Alaricianum*, and of Alaric II. laid the foundations of the legal systems of every country in southern and central Europe. Roman law in some European countries forms the Common Law of the country, speaking like our Common Law when the Statutory Law is silent; in regard to the indigenous law of Germany, it occupies "not only the position of an auxiliary supplemental code, which becomes silent when Statutory Law speaks, but it has moreover entirely supplanted many peculiar Germanic juridical doctrines and institutions." It is of this modern Roman law that Dr. Tomkins's book treats. The learned authors

have founded their compendium on the treatises of Puchta, Von Vangerow, Arndts, Franz Moehler, and the *Corpus Juris civilis*.

The publication of each of these three books opens a distinct field in the progress of legal education, and is an evidence that the profession will soon have in their hands works which will place them on a level with those possessed by law students in France and Germany. As an instrument of legal education Roman law stands pre-eminent, not merely because it can be mastered as a whole in a way in which no other legal system can be mastered, but because it forms the basis of almost every system of jurisprudence in Europe and America, and has, even in its modern form no less than its ancient, formed the subject of comment by the most able jurists whom the world has produced. As complete believers in the historical method of study we are glad to give the heartiest welcome to M. Ortolan in his English dress, and to the excellent edition of Gaius, while, as tending to make the dry bones live, we are glad to see in English, for the first time, a treatise on "Modern Roman Law."

ART. XI.—THE LAW OF COMPENSATION FOR CLOSED CHURCHYARDS.

QUESTIONS of considerable interest, not only to the profession but to the public generally, have been recently decided upon the matter which is the title and subject of this article, and as it appears to us that there is some discrepancy, or variance, between the decisions upon it of the Court of Chancery and of the Court of Common Pleas on the one hand, and those of the Court of Queen's Bench on the other, we propose to consider all those decisions together, being only four in number, with a view to enabling the reader upon a comparison of all of them to form his own opinions with regard

to the consistency or inconsistency of each. Of the four decisions two have been in the Court of Chancery, one in the Court of Common Pleas, and one in the Court of Queen's Bench. The question for decision has been slightly different in each of them, having sometimes been the principle of the assessment of the compensation, sometimes the person entitled, and sometimes the proportions in which different persons are entitled, to the compensation payable by public bodies for the old and long disused churchyards, taken by them in the exercise of the usual compulsory powers of purchasing and taking lands. The case in the Queen's Bench was *Stebbing v. The Metropolitan Board of Works* (23 L.T. Rep., N.S., 530-535), that in the Common Pleas was *Hilcoat v. The Archbishops of Canterbury and York* (10 C.B., 327) and those in the Court of Chancery were *In re St. Pancras Burial Ground* (L.R., 3 Eq., 173-392) and *Campbell v. Mayor and Corporation of Liverpool* (L.R., 9 Eq., 579-586) together with the subsidiary cases of *Ex parte the Rector of Liverpool* (23 L.T. Rep., N.S., 354), and *Ex parte the Rector of St. Martin's, Birmingham* (23 L.T. Rep., N.S., 575-577). It will be more convenient, and also more conducive to perspicuity, to commence with the decisions in the Court of Chancery first.

In the case of the *St. Pancras Burial Ground* it was held by the present Lord Chancellor (when Vice-Chancellor) that the persons who had been entitled before the closing of the burial ground to receive the burial fees on account of interments made in the churchyard, notwithstanding that they had ceased from the date of the closing thereof, that is to say, for over ten years, to receive any such fees, were nevertheless entitled to receive anew, or rather in lieu of the old burial fees, the full amount of the dividends or income of the purchase or compensation money, paid for a part of the old churchyard taken by a certain railway company in the years 1863-4, for the purposes of their railway. The material parts of the Lord Chancellor's judgment when stated in brief are as follows:—

"If the burying ground had not been closed when the property was taken by the railway company, I should have ordered the money to have been invested in consols and the income to be paid to the same persons as had theretofore received the burial fees. . . . But the ground having at the date of the purchase by the company and for some time previously thereto been closed by an Order in Council, it was in a state of complete suspension *quâ* burying ground at the date of the purchase. The Order in Council under which it was closed against burials operates as an inundation might have done, which would have rendered the burial ground unproductive until the water was drawn off, or drained off, from it. And if a railway company had taken it while in this unproductive state, they would have taken it subject to the rights thereto, or interests therein of the persons entitled to the burial fees; for the inundation, although it had depreciated, had not destroyed the land itself and those rights and interests therefore would have survived the flood; in other words, the disqualification having been removed by whatever cause (whether Act of Parliament or other act), the land would have remained as before subject to the old rights and interests."

Again, in the case of *Campbell v. Mayor and Corporation of Liverpool*, Vice-Chancellor Malins held, and chiefly upon the authority of the *St. Pancras Burial Ground case*, that the Corporation of Liverpool, notwithstanding that it had originally been itself the grantor of the land forming the burial ground in question in the case, and notwithstanding also that by a like Order in Council to that before mentioned such land had in effect, or practically, ceased to be a burial ground, that is to say, was become divested of the uses for which it had originally been given, was nevertheless not entitled by reason merely of the practical determination of those uses to repossess again as by reverter of their old estate the land which had some time thereinbefore been a burial ground, but that on the contrary the fee simple of the land forming the burial ground remained in the original grantees of the Corporation and their successors, and could only be regained or re-acquired by the Corporation upon the usual terms of

purchase or the payment of a fair equivalent. And the same Vice-Chancellor, in the two subsidiary cases of *Ex parte the Rector of Liverpool* and *Ex parte the Rector of St. Martin's, Birmingham*, before mentioned, awarded in each of them to the rector for the time being, as the person theretofore entitled to the burial fees, the full amount of the dividends accruing upon the investment of the purchase-money, the dividends being taken in each case to represent and to be in lieu of the burial fees; and the circumstance that for a series or succession of years there had by reason of the closing of the burial grounds been no payments at all made to the rector on account of the burial fees, did not appear to the Vice-Chancellor to be at all material to the question which was before him for decision, although he indeed remarked that the rector had had a windfall.

Turning now from the decisions of the Court of Chancery in this matter to the decisions of the Courts of Common Law, we shall consider first the case of *Hilcoat v. Archbishops of Canterbury and York*, and secondly, or lastly, the case of *Stebbing v. The Metropolitan Board of Works*,—the former of those cases being the decision exclusively relied on by the plaintiff, and also exclusively quoted by the defendant, in the latter case. In *Hilcoat's case*, Wilde, Chief Justice of the Common Pleas, in affirmance of the verdict of a jury held in effect that the plaintiff Hilcoat, as incumbent of a certain church and owner of certain consecrated property adjoining, was entitled in respect of his said twofold interest to obtain from the defendants, the Archbishops, such a sum of money as would represent a fair proportion of the purchase money for such land paid or payable by a certain local railway company to the Archbishops; and that his proportion of such compensation money ought to be fixed or ascertained upon the following principle,—that is to say, the property taken by the company was to be regarded as having *eo instanti*—upon the taking of it become divested of its spiritual character, and re-invested with its original secular one, and

its value therefore to the incumbent, Mr. Hilcoat, was to be assessed upon the latter assumption, and not upon the former one, so that *the disqualification* theretofore attaching to the property, by reason of its consecrated character, as it was in fact removed by the operation of the Lands' Clauses Act and the action of the Company, so it should be taken to be removed for the advantage of the plaintiff also equally with the Archbishops and with the company itself; and in consequence of this decision the plaintiff's proportion of the compensation money was raised from 300*l.*, at which it had before been estimated, to the sum of 1500*l.*

And now coming lastly to *Dr. Stebbing's case*, we find in this case the first hitch, or apparent hitch, in the harmony of the decisions which have been given in the matter. The Lord Chief Justice of the Queen's Bench and the other judges of that Court with him, there held that the plaintiff in respect of his freehold interest in the closed-up burial grounds in question, as rector of the parish or united parishes to which such burial-grounds belonged, was entitled only to so much of the purchase or compensation money paid or payable by the company (The Metropolitan Board of Works), the purchasers of the said grounds, as represented or was equivalent to the actual present value to him of the said lands from the time that, and during the years that, the said grounds had been closed, that is to say, a value so slight as to be scarcely (if at all) appreciable in pounds, shillings, and pence. The material parts of the Lord Chief Justice's decision when stated in brief are as follows:—

“Two circumstances, and not one circumstance only, must be taken into account in determining the amount of the compensation or purchase-money payable to any one in respect of lands compulsorily taken from him by a company,—and those two circumstances are (1.) The amount of the interest which the person has in the land taken; and (2.) The quality itself of the land in which that interest exists. The land, for example, might be a piece of waste land; in such a case the vendor's interest therein, however

large, would be sensibly diminished in value by the inferior quality of the land. And so is it with the plaintiff's interest in this case; that interest was doubtless a freehold one, but then it was an interest in barren land, that is to say, in land which had long ceased, and ceased for ever, to be productive to him in the only way that it had ever been productive to him before, and in land moreover which he could never by any act of his have rendered productive again in any other way. Now all that the plaintiff is entitled to receive *is the loss which he has actually sustained*; but that is *nil*, or at least inappreciably small, as appears from what I have already stated. And the mere circumstance that the land taken by the company assumes in the company's hands immediately it is taken a very considerable value, does not raise in the plaintiff any equity or any right at all, either in justice or in reason, to insist upon participating in the value so restored to the land. I am therefore of opinion that the rector, the plaintiff in this case, having a freehold interest in the land, and that freehold interest being of no value, is not entitled to be compensated according to the value which the land acquires when transferred to the Metropolitan Board of Works, the defendants. The truth is that the land is but taken from one public body to be given to another; and the plaintiff's individual interest having ceased, the public alone are interested in the matter."

We have now put it in the reader's power to judge for himself whether or not the decision of the Court of Queen's Bench is consistent with the previous decisions, or whether it is not rather an innovation upon the law, a violent interference with the rights of property, and indeed a modern "spoliation of the monasteries."

ART. XII.—THE CASE OF THE EX-NAWAB OF
TUNK.

WE have received a printed statement of facts in support of a petition by the ex-Nawab of Tonk to the House of Commons, praying for a trial. The facts set forth are in themselves very curious, and disclose one of those sudden outbreaks of violent passion with which readers of Indian history are familiar. Broadly stated they are these:—The Nawab of Tonk, acting on the advice of the Viceroy, Sir John Lawrence, determined to carry out in his State a number of internal reforms, constructing roads, establishing police, &c. The Nawab is a Mahomedan. His most powerful feudatory was however a Hindoo—the Thakoor of Lawa. Tonk is surrounded by Hindoo States, and one can easily understand that a continual state of plotting against the reigning Mahomedan body will be almost the normal condition. The fort of this feudatory it is alleged was the shelter and asylum of robbers. This, again, did not increase the good feeling between the sovereign and his subjects. The feudatory was himself a young man, the management of his State being mainly in the hands of his uncle. On August 1st, 1867, this uncle, accompanied by many of his followers, called at the residence of the minister of the Nawab of Tonk, and finding him ill and unable to see visitors, returned about nine in the evening similarly attended. Then followed a fight. One Mahomedan officer was killed, and seven Sepoys were wounded. On the other side, the uncle and fifteen of his followers were killed. This is by one account; the other gives ten of the Lawa party and seven of the Tonk as the victims. An inquiry took place on the part of the Indian Government, and in the middle of November, in the same year, the Nawab was informed that he was to be deposed. The Nawab at once obeyed.

Now upon these facts the first conclusion is clearly this, that if the deaths of these eighteen men can be shown to have been the result of a deliberate plan by the Nawab, not only did he fully deserve deposition, but even a still severer punishment. If this were a slaughter in cold blood, no punishment could be too great. But it is necessary to show, before the Nawab receives punishment, first, that the incident was anything more than a free fight in Indian fashion; and, second, that the Nawab can be in any way connected with the carnage. In other words, it is necessary that a thorough investigation of the whole of the circumstances should take place, in order that justice should be done; that the deposition should be confirmed, if the facts point to his guilt; that the Nawab should not, on the other hand, suffer any further loss, unless there can be no reasonable doubt in the minds of those who have investigated the subject, that his guilt is made out. What the Nawab claims is, that he shall not be condemned unheard; that he shall have the same presumption of innocence in his favour which is not denied to any person, however much the facts may appear against him, who is charged with a breach of the criminal law. He complains that the justice which has been meted out to him is too much after the Jedburgh fashion, of hanging first and trial afterwards. He asserts that he is prepared to show that he had no connection whatever with the fray; that it was either wholly accidental, or brought about by the insolent conduct of the uncle and his followers; that these went uninvited to the minister's house, forced an entrance, behaved with insolence, and provoked a struggle; but that on any ground there is not the smallest evidence to show that the attack was premeditated, or was in any respect the result of his orders, or done with his approval.

Now, upon these facts, in accordance with the rule which this magazine has always followed, we give no opinion whatever. We say further, that no one would be justified in giving a decision upon what is, after all, but an *ex-parte*

statement of facts, and that a proper conclusion can only be arrived at as the result of a careful investigation. But the facts are such as appear to us to call for an investigation. The statement of the case against the Nawab seems to be this: that the minister invited the Chief of Lawa to Tonk under pretence of redressing his grievances, that the Chief accordingly went to Tonk with fifty of his retainers—the whole occurrence sounds like a tale out of the history of the highlands of Scotland—that on the day of the affray, the uncle with a few followers called on the minister about noon, when he was well received, and returned well-pleased with the interview; that in the evening of the same day the minister sent a messenger to the Chief requesting him to wait upon him; that, accordingly, the uncle of the Chief, with about fifteen followers, went to the minister's residence, arriving there about 9·0 p.m. They were all admitted. The uncle and three others were invited upstairs and then set upon and murdered. The remainder were similarly attacked and all killed but one.

The version given by the other side of course differs widely from this. The Nawab declares that being extremely anxious to set about the reforms urged by the Viceroy, he found his leading opponent in these reforms in the Chief of Lawa. With a view to making some arrangement the Chief was invited to the capital. He consented to come, bringing with him, as we have seen, a number of retainers. The uncle visited the minister at noon, on the 1st of August. The minister was ill and unable to see the uncle. This gave offence to the latter, who is asserted to have used threatening language. Here comes the first discrepancy between the two accounts. The Tonk version represents the visit paid at noon as unsuccessful; the Lawa version makes such visit out to have been altogether successful. The Tonk story is that the minister was unable on account of illness to see his visitor. The Lawa version is that he not only saw him, but that the uncle was extremely pleased with what had taken place; obviously,

therefore, it is worth while trying to get at the facts here, and when an investigation takes place the first point to direct attention to will be the question of the minister's illness. Much turns upon this, because, not merely does it help us to form some notion of the respective credibility of the parties, but it forms a guide to point to us what was the *animus* with which the second visit was paid. If the minister saw them and the interview was satisfactory, then the subsequent Lawa version, that a messenger arrived in the afternoon, inviting the uncle and his party to pay an evening visit, becomes probable. If, on the other hand, it can be shown that the minister was really ill and had been ill for some time, and that in consequence he was unable to have an interview with the uncle, then the Tonk version, that the uncle went away angry and discontented, and uttering threatening language, is exactly what, judging from the character of the Lawa party, one would have expected to find happening.

The evidence on this point is gone into in the papers before us, and without attempting to give it, it is impossible to help saying, that the facts brought forward are such as to throw the very gravest suspicion on the story that the minister received the uncle. The Tonk party assert distinctly that they can prove incontestably that the minister was ill, and unable to receive any visit whatever. This, then, is the first point which should come under judicial investigation.

Another curious and suspicious feature in the case is, that different versions are given of the affray by the Lawa party. In addition to the one we have already given, and by a man who is alleged to have been the sole survivor, a second version appears as having been given by a writer who, if he were telling the truth, must have been an eye-witness of the events he describes. He asserts that the attendants on the uncle were killed by a volley discharged by the minister's sepoys. The former version was that they were killed with swords. But we should weary our readers if we attempted to

point out the discrepancies in the account given of the final slaughter. As we have already said, they all point to the necessity of further inquiry—inquiry which should be full and searching. Upon the whole case it is impossible to help making this remark, that if the Nawab of Tonk be guilty, that is, if he induced his minister to bring about the massacre of his enemies in the way alleged, then the Nawab must be one of the greatest dolts living, for a more clumsy massacre was never devised. No one, with an average amount of sense, would dream of murdering a man's uncle and a few of his servants in order to get rid of a rebel chief, or having conceived such a project, would carry it into execution in the way alleged.

**DIGEST OF CASES IN COURT OF SESSION
(SCOTLAND) ON QUESTIONS OF GENERAL
APPLICATION.**

1.—28 Jan., 1869.—*Inglis v. Inglis*.—41 *Jurist*, 234.

LEGACY—WIDOW.

By a settlement a sum of money was bequeathed to the testator's grandson in life-rent, and on his death one half to go to his lawful heirs. He died without children. His widow claimed the one half of the bequest as heir in movables to that extent. Her claim refused. Per Lord President (Inglis). "The question is whether a widow claiming her legal rights is in any sense the heir of her husband? I am of opinion that she is not, and that however loosely the term "heir" may be used in a settlement, it can never comprehend a widow claiming *jure relicte* on the death of her husband. The character of heir of every class, whether of heritable or movable estate, is based on a right of succession to the deceased in respect of the right of blood, and does not involve, in any sense or degree, a *jus crediti*."

2.—29 Jan., 1869.—*Glasgow and South Western Railway Company v. Rain*.—41 *Jurist*, 237.

RAILWAY—RESPONSIBILITY.

A cattle dealer hired a truck, loaded it, and sent it without any one in charge. At Stafford some of the cattle were found dead, and others injured by overcrowding. There was no proof of negligence on the part of the company. *Held* not liable Per Lord President (Inglis). "The pursuer hired a waggon for a special purpose, and having loaded it himself he seems to have been very much in the same position as if the waggon was his own; this is an entirely different relation between the parties from that which ordinarily exists between the sender and the carrier in the conveyance of goods."

3.—30 Jan., 1869.—*Lang v. Lang*.—41 *Jurist*, 240.

PARENT AND CHILD.

Held that a father is not to be deprived of the custody of a pupil child merely because his wife has obtained a decree of separation on the ground of cruelty, but it has not been shown that the health or morals of the child will be endangered—per Lord Benholme. "It was pressed on us that the English judges have looked rather to the hardship which a wife separated from her husband, through no fault of her own, would suffer in being deprived of her chil-

dren than to the interests of the children themselves. It may be quite true that in England the statutory powers of the Judges exceed their common law powers in regard to this matter, but it must be remembered that at common law the powers of the English Judges are very limited. With regard to ourselves, I cannot hold that under the statute (Conjugal Rights Act) we have any wider or more extensive powers than we have at common law. On the other hand, I do not think that our statutory powers are more limited than our common law powers. In this case we are not exercising our statutory, but our common law, powers, and it is, therefore, necessary to consider only the limits of the latter." "Our common law justifies an interference with a father's right to the custody of his pupil children only when it can be shown that the children's health, life, or morals will be endangered by their remaining in their father's custody."

4.—28 Jan., 1869.—*McBride v. Williams*.—41 *Jurist*, 241.

SLANDER—PRIVILEGE—MALICE.

Held on an issue of slander, false and calumnious, without malice, (but malice was alleged in the record) where the defendant raises in defence the plea of privilege, then the pursuer can meet it with proof of malice. Per Lord Ardmillan—"In an action of damages for slander, where there may or may not be privilege, the question whether malice shall be put in issue depends on the Pursuer's averments. If he has himself brought out the privilege, he must meet it by putting malice in the issue. If privilege does not come out on the pursuer's record but is alleged by the defender, an issue is allowed without malice, but whenever privilege appears in the proof, malice becomes essential to the Pursuer's case. If he has not alleged malice in his record the case is gone; if he has alleged malice on the record then the issue, framed on the absence of privilege, did not contain malice, he is entitled to prove malice to meet the privilege. There is a certain amount of legal malice involved in every slander; where there is no privilege there legal malice is presumed. When privilege is instructed the presumption ceases and malice must be proved."

5.—2 Dec., 1869.—*Straw v. Dow*.

JURISDICTION—ARRESTMENT TO FOUND JURISDICTION.

A trader became bankrupt and arranged a settlement in a composition with his creditors. He took up his residence in England. A creditor who had accepted the composition raised an action to set it aside on the ground of fraud, and to reduce a conveyance of the Scottish Heritage made by the bankrupt, and for payment of his original debt. The jurisdiction was founded first on the heritage being really the bankrupt's property, and second on an arrestment of a debt of 1*l.* 8*s.* 6*d.* due by a debtor in Scotland. Defence, no jurisdiction. The Court sustained the jurisdiction on both grounds. Per Lord President (Inglis)—"If the pursuer's allegations be true

the defender is in reality the owner of the estate, which was apparently carried by this fraudulent disposition, and as it is heritable estate in Scotland that is sufficient to create jurisdiction against him. It seems to be thought that the arrestment is for a debt of too small an amount to found jurisdiction. The sum of 1*l.* 8*s.* 6*d.* is a substantial sum of money, and it is no objection to the jurisdiction that if a decree be obtained that will be all the creditor can recover to satisfy a claim of 800*l.* Unless the thing arrested be of no value at all, I think the smallness of the amount is no relevant objection to the foundation of jurisdiction."

6.—5 Nov., 1869.—*Executors of General Sir Thomas Menzies Douglas*.—41 *Jurist*, 268.

SPECIAL CASE FOR OPINION OF COURT—LEGACIES.

Held that legacies to be paid out of certain funds were general legacies, and so payable out of residue, where the special fund was insufficient, the Court holding the direction as to the source of payments merely demonstrative and not taxative. (Authorities Lord Eldon in *Deane v. Test*, 9 Vesey, 146, and many other English cases.) *Held* that a bequest of "my swords, uniforms, and all other personalities, except such as I may specially bequeath to others," did not carry the residue of the testator's movable estate.

7.—6 Feb., 1869.—*Wardrope v. Goseling*.—41 *Jurist*, 280.

PARENT AND CHILD,

Trustees applied for the appointment of a factor to receive a sum payable to pupils, on the ground that their father, their legal administrator, was in embarrassed circumstances. The Court refused the application. Per Lord Justice Clerk (Moncrieff)—"We are not in a situation in which we can say that the interests of the children require us to deprive a parent, against whom there is nothing said but that he is poor, of the rights which the law gives him."

8.—16 Feb., 1869.—*Muir v. Bryden*.—41 *Jurist*, 282.

PRINCIPAL AND AGENT.

A party for a time acting as the seller's agent was held liable for other purchases, as the purchaser, because he received without challenge invoices wherein he was stated as the purchaser, and he did not divulge the names of the parties to whom he sold these goods. Per Lord Cowan—"Under the law where an agent sells goods to third parties, he is responsible for the price to his constituents, unless he timeously reveals the names of those to whom he sold them, so that recourse may be had against the true purchasers."

9.—20 Feb., 1869.—*Caledonian Railway Company v. Fleming.*

RAILWAY—JURISDICTION.

The Railway Consolidation Act excludes all review by superior court of proceedings before justices. Justices dismissed a complaint for a railway offence because of delay in bringing the complaint. The Court of Justiciary, notwithstanding the clause of exclusion, recalled the judgment and remitted to the justices to hear and decide the case Per Lord Justice General (Inglis).—"No principle is better fixed than that a judge is bound to exercise his jurisdiction when properly called upon to do so by a person having an interest. If he refuses he commits an excess of jurisdiction. Their refusal is as much an excess of jurisdiction as if they had gone beyond the statute altogether."

10.—23 Feb., 1869.—*Thomas v. Waddel.*—41 *Jurist*, 296.

BANKRUPTCY—FACTUM ILLICITUM.

A friend, to facilitate the settlement of a bankrupt, agreed to pay a creditor a sum on the bankrupt obtaining his discharge, on condition that the creditor gave up a preferable claim on the estate. In an action for payment, held that the arrangement, though unknown to the bankrupt, and the general body of creditors was illegal and so could not ground an action. Per Lord Justice Clerk (Moncrieff). "I do not think there is anything in the case which can lead us to the conclusion that the nullity is to apply only where the estate is diminished or the interest of the creditors affected in the amount of estate to be distributed, to force a composition contract on an unwilling creditor is a strong act of legislative authority which can only be gratified on the assumption that the vote of the majority is freely and purely given."

11.—25 Feb., 1869.—*Pearce Brothers v. Irons.*—41 *Jurist*, 302.

CONTRACT—LIABILITY.

Engineers furnished a pinion to a mill-owner. The price was paid. It did not work satisfactorily and was repaired. After fourteen months the pinion broke because of defective construction. The engineers then supplied a new pinion. In an action for the price—*Held*, they could not recover. Per Lord President (Inglis).—"This is not the case of goods sold and delivered. When a man buys goods, pays for them, and takes delivery, there is an end of all controversy, and he cannot afterwards raise the question whether the other party has fulfilled the contract, unless a latent imperfection in the article has been subsequently discovered. But these principles are not applicable in the case of machinery. You cannot tell whether it is efficient till it has been tried, and that can only be done on the premises, where it is intended to work, and accordingly it often happens after machinery has been erected it goes well for a

time, but afterwards shows defects, which the party who has furnished is bound to remedy."

12.—3 March, 1869.—*McIsaac v. MacKenzie*.—41 *Jurist*, 323.

ASSESSMENT—MILITIA ACT.

The Militia Act (17 & 18 Vict. c. 106, s. 36) exempts from assessment buildings for keeping militia stores. An assessment for poors' rates was laid on buildings rented for that purpose. Plea for the assessment, that the exemption only applied to public buildings and not to private property, which would be conferring a benefit on an individual. *Held* (Lord Kinloch dissenting) that the exemption applied. Per Lord Deas—"The *place* is neither to be valued nor assessed if it be a place provided for keeping militia stores." Per Lord Kinloch—"The assessment is on the owner or occupant respectively in respect of the property. When the commissioners of supply purchase the property, and it is occupied by the militia, they will be free from assessment as owners or occupants. When they merely rent the premises they will be free from the occupant's assessment. But the owner, of whom the property is held, will be held liable to the owner's assessment just as before."

H. B.

Notices of New Books.

[*.* It should be understood that Notices of New Works forwarded to us for Review, and which appear in this part of the Magazine, do not preclude our recurring to them at greater length, and in more elaborate form, in a subsequent Number, when their character and importance require it.]

Commentaries upon International Law. By Sir Robert Phillimore, D.C.L. Vol. I. Second edition. London : Butterworths. 1871.

OF no time in the history of Europe may it be more truly said than of the present, that International Law, regarded simply as the *jus gentium* to which civilised nations should be anxious to yield obedience, is on its trial. Nor can it be said that its influence is now felt as of much account with even the most advanced nations. The apparent open disregard of the binding authority of treaty engagements, as shown by the recent notes of the Russian Chancellor on the Black Sea question, and that of Count Bismarck in the matter of Luxembourg; the predominance of purely physical force in the determination of international differences; the apparent futility of efforts made to bring belligerent States to an agreement by more pacific methods; all these facts point to the paramount need of advancing, if it be possible to advance, the Public Law of Nations to that position which would enable it to force upon States in their mutual intercourse, the recognition of, as Sir R. Phillimore expresses it, the external obligations of justice.

We therefore welcome with much satisfaction the appearance of a second edition of Sir R. Phillimore's well known work upon International Law, re-edited in view of recent events, and with the object of showing, as the learned author observes in the preface, that however "violence, oppression, and sword law," may now prevail in part of Europe, the belief of mankind ought not to be shaken, but should still rest upon justice, the common concern of all men, the only true policy of all States. The authority of this work is admittedly great, and the learning and ability displayed in its preparation have been recognised by writers on public law, both on the Continent of Europe and in the United States. Still it is a question whether it has yet attained that prominence as a Commentary upon the *jus inter gentes* which its merits ought perhaps to have secured for it, and which has obtained for the work of Wheaton, for example, so wide a celebrity. We proceed, however, to give in outline some account of the subjects of which the present volume treats; to do more is not practicable within the limited space at our disposal.

The internal and external relations of States with each other gene-

rate, as in the case of individuals, certain rights and obligations, which, as forming the basis of International Law, it is the object of the introductory portion of the book to illustrate and define. These lead to the chief division of the entire subject into the departments of Public and Private International Law respectively, the latter term being co-extensive with that of comity, or the relations to be observed towards the individual members of a foreign State. As regards the Public Law, binding on civilised communities viewed as moral persons, its origin is, as in the case of individuals, derived from the Divine law—*leges Divinæ*—as its primary, and positive legal institutions as its secondary, source. And it is with much research, and an almost eager display of learned quotation, that Sir R. Phillimore illustrates* his position—not, we may remark, by any means one universally conceded—that these sources of law were recognised by civilised nations of old as binding on them in their international relations, though in the case of the Roman Empire the statement may be accepted with greater certainty than with other ancient communities. The presence, however, and influence of the Divine, or rather the Christian element in the Law of Nations, has probably led, though not to the extent attributed to it by Sir R. Phillimore, to the morality of treaties and international usages being largely increased, many customs being now regarded as outrages on the Law of Nations which in less civilised times were allowed, or openly insisted on, as legitimate incidents to belligerency, or to contractual obligations formed in time of peace.† The historical value of the Roman Civil Law too, as explanatory of the terms and sense of treaties and the language of jurists, is illustrated in the work before us by copious citations from the opinions of civilians and the judgments of Courts of Maritime Prize; and the great influence which custom has upon the rights and duties of States—an example of which is to be found in the principle of reciprocity, so remarkably enforced by Sir W. Scott in two of his most celebrated decisions‡—meets with full discussion.

Leaving the chapters which treat of the sources from which the Law of Nations springs, we come (Pt. II., ch. i.) to the subject-matter with which chiefly the Law of Nations deals, namely Sovereign States, the, as Sir R. Phillimore expresses it, “proper primary and immediate subject of international jurisprudence.” The origin of these societies, how they are defined, the conditions with which they must comply in order to be regarded as independent, and the incidents to the subordinate position of those communities which exist in a greater or less degree of subjection to more powerful States, these questions, together with that (ch. vii.) of changes in a State, are here discussed, though rather more in the spirit of one who has prepared a careful Digest of the law, than in the light of international

* Ch. iii. sec. 24.

† See this question examined from a different point of view by Mr. Austin, *Jurisprudence*, Vol. I., pp. 178, *et seq.*

‡ The *Heinrich* and *Maria*, 4 Rob. Rep., 54. The *Santa Cruz*, 1 Rob., p. 65. See also the *Maria*, *ibid.*, p. 350; Phillimore, Vol. I., p. 40.

jurisprudence. And yet the subject is one which admits of, and, indeed, invites a more philosophical treatment. The Swiss Cantons, the (late) Germanic Confederation, the United States, and the Central and South American Republics, exhibit so many separate varieties of the original type of sovereign or independent State, though each distinguished from the other, and also from that form of government known by the name of empire or monarchy, by the presence to a greater or less degree of the principle of federation, which serves to modify—at least, as far as domestic administration extends—the normal conception of an independent State. But it is impossible not to observe that Sir R. Phillimore contents himself with giving but an historical analysis, no doubt very complete, of these several species of national life, and a citation more or less exhaustive of the opinions of writers who have treated of them,* without attempting to point out to the student that higher and more philosophical method of investigation, which would lead him to inquire into the principles which underlie the surface of these societies, and which impose upon them the need, of which, perhaps, they are themselves unconscious, of selecting, in order to the independence of their national existence, one form of government rather than another.

The volume before us proceeds to deal, after noticing questions connected with rivers, straits, and inland seas as subjects of public property, with the important and interesting subject of acquisition, or the mode in which an accession of territory, previously subject to a foreign country, or a territory hitherto unoccupied, is acquired by a sovereign State, although we think that here also a reference to the important view taken of this doctrine by Mr. Maine in his work on "Ancient Law" (ch. viii. p. 244), might properly have found a place. But the extracts given from the more prominent treaties, and those conventions through which this department of jurisprudence has been given effect to, and by which it has entered into the actual transactions of mankind, add much to the value of the work as a book of reference, and are in fact, as we remarked of the earlier portion of the volume, a Digest of the Law of Nations on the subject. Our space only allows us to mention that in proceeding to discuss (ch. xviii.) the right of jurisdiction over persons, Sir R. Phillimore notices the important question of naturalisation, and refers to the recent Act passed last Session for amending the law relating to the legal condition of aliens and British subjects.† The volume ends (Part IV.) with an instructive and learned chapter on Intervention, in connection with the Right of Self Defence, and the Preservation of the Balance of Power, in which the student will find an outline of the recent history of this latter question, together with a summary of diplomatic papers, and of the opinions of those writers who have treated of the doctrine. And with this necessarily imperfect sketch

* Among which, however, the works of Mr. Austin find no place, an omission for which, on any theory of the work, it is difficult to account. The student should consult the chapters upon the Constitution of Sovereign States—Jurisprudence, Vol. I., pp. 268, *et seq.*

† 33 Vict. c. 14, passed May 12, 1870.

we must conclude our notice of the first volume of a work which forms an important contribution to the literature of public law. It may be doubted, indeed, whether its usefulness has not been sacrificed to the mass of learning, legal as well as classical, which on all sides almost oppresses the reader, a fault—for so it must be regarded—from which the more modest work of Sir Travers Twiss is free, and which therefore causes the latter book to be the subject of more frequent reference, both by the student and practitioner, than Sir R. Phillimore's more elaborate volumes. Perhaps something too may be put on the score of that absence of imagination which in some writers, Duer for example, and Dana, serves to lighten with choice phrase, or happy illustration, even such a heavy subject as International Law, making less weary the statement of doctrine, or formal citation of case or treaty. From this Sir R. Phillimore's book is absolutely free; and it is therefore to be consulted mainly for the information and learning, varied and exhaustive, which it supplies. In this point of view the book is of great utility, and one which should find a place in the library of every civilian.

The Law of Blockade. By H. B. Deane, B.A., of the Inner Temple.
London: Longmans & Co. 1870.

THIS is a fragmentary contribution to the literature of a large subject. It is an essay which obtained, in 1869, the International Law Prize at Oxford, and, for that reason, was considered by the author and some friends—in whom the critical faculty would not appear to have been present to any distressing extent—to be worth publication. The fate of prize essays has become proverbial, and we cannot say that the present *brochure* is an exception to the rule which assigns to such compositions a diminished value. It consists, in fact, of little more than the names and titles of the works of some of the best known writers on the law of blockade; and it contains, also, what purports to be an account of the doctrine, as far as it is to be collected, from the leading decisions of Sir W. Scott. Of the decisions of the American Courts, in cases arising out of the recent civil war, and under which the Law of Blockade has undergone such important modifications, the author does not appear to have ever heard. And, although this little book is not uninteresting as the effort of a young student to treat of an important subject, the information it does contain is far too general to allow it to be of much value as a guide to the branch of Maritime Law of which it professes to treat.

A Selection of Leading Cases on the Hindu Law of Inheritance, with Notes. By the Honourable John Bruce Norton, of Lincoln's Inn, Barrister-at-Law, Advocate General of Madras, and Member of the Legislative Council. Part I. Madras: C. Bt. Cruz. London: Stevens and Haynes. 1870.

WE can find nothing but praise for the very useful and exhaustive

work under notice. Its author, an able lawyer and a man of indefatigable research, taking Smith's *Leading Cases* as his model, has applied the system adopted in that work to the Hindu Law of Inheritance, which he proposes to treat under fourteen heads. Of these heads eight are confined in Part I., and the remainder will be found in Part II., which is promised in six months. The subjects treated of in Part I. are Marriage, Studhan, Maintenance, Adoption, Guardianship, Benamee, Coparcenary, and Pension. One noticeable portion of the work is the Appendix, which in Part I. occupies rather more than one-third of the entire volume. The utility of this appendix will be seen when we explain that in the cases and notes in the body of the work constant reference is made to Menu Nareda, the Daya-Chaya with Metachshua, the Smriti Chandulia, and other less known Indian authorities. Now, wherever one of these authorities is referred to, a verbatim English translation of the text of the passage is given in the Appendix, and thus the necessity of consulting the original is obviated. When Part II. is issued, and the work is complete, no Indian lawyer's library ought to be without it.

A Manual of the Hindu Law ; for the use of Students and Practitioners. By Standish Grove Grady, Barrister-at-Law, Recorder of Gravesend, Reader on Hindu and Mohammedan Law, and the Laws in force in British India, to the Inns of Court, Author of "The Law of Fixtures and Dilapidations, Ecclesiastical and Lay," and joint Author of "The Law and Practice of the Crown Side of the Court of Queen's Bench;" Author of "The Hindu Law of Inheritance," "The Mohammedan Law of Inheritance and Contract," and Editor of "The Institutes of Menu and of the Hedaya." Wildy & Son, London. D'Cruiz Advertising and Printing Co., Limited, Madras.

WE have already availed ourselves of the opportunity of examining and reviewing, at the time of their publication, the works above enumerated, by the same author, and although we bestowed commendation on the "Hindu Law of Inheritance," when it appeared, as a work admirably adapted to meet the wants of the Bench and the professional practitioner, yet we anticipated that it would not be found to be elementary enough to convey to the beginner a knowledge of the principles of Hindu Law. We are glad to find that the author has made that discovery for himself. No doubt, in discharging his duties as Reader on Hindu Law to the Inns of Court he felt that the student required information upon the law of a more elementary character than his work on "The Hindu Law of Inheritance" was capable of imparting; not that we think the student would be justified or could dream of dispensing with the latter, for, after he has familiarised himself with the principles of the law, he will require a

more recondite and practical work elucidating the principles which he has already acquired.

The work before us professes to be a mere Manual for the use of students, but both the bench and the profession will find in it a work of practical utility as embodying principles with which they frequently require to refresh their memory during the conduct of a suit. It has long been a stigma upon the schools of law in both England and India, that no steps had been taken by the heads of our Legal Seminaries, or by the Indian Government, or by the Civil Service Commissioners, both here and in India, for the purpose of providing elementary legal works for the education and instruction of the vast number of gentlemen who are employed in the Civil Service in administering the law to the natives of India. But that they should be compelled to draw their knowledge of the law from works published forty years ago by authors, no doubt, of the highest legal learning and reputation as lawyers and scholars, is matter of surprise and regret, particularly when we know that errors must have crept into these works in consequence of the great disadvantages under which their authors laboured in preparing their works for publication, arising from their ignorance, more or less, of Indian languages, especially Sanscrit, within which the law had been locked up, few text books being known or accessible to them through translations; the conflicting authorities of the various schools, rendered still more so, by the discordant, inconsistent, or contradictory comments, or explanations of glossators; the difficulties of separating the living doctrines of the law from its fossil principles; and when we add to all these, the inherent obscurities of the code itself, often based upon fantastic analogies or upon religious doctrines, hard for the western intellect to apprehend; and last, but not least, the absence of any clear line of distinction between the illegal and morally reprehensible, so significantly pointed out by the *factum valet* doctrine of the Bengal school, these obstacles, no doubt, enhance our admiration of the singleness of purpose, acuteness and depth of research, which enabled those writers to evolve order out of such a chaos, and to present in a readable form and succinct compass, the doctrines of Hindu law. But these very obstacles at the same time engendered, and prove, the reasonableness of the objections that have been raised against those works, and account for the errors that have crept into them, and which our more intimate acquaintance with the sources of the law, enables us to detect, and justifies the condemnation of those works as obsolete and unsuited to convey a correct idea of the existing state of the law which, during the long period alluded to, has undergone, like our common law during the same interval, great changes and modifications. Yet these are the works, no doubt, in the absence of more recent publications, which are placed by the Civil Service Commissioners, both here and in India, in the hands of students, who are thus compelled to carry an obsolete law for administration amongst a people who are by nature lawyers themselves, and who soon discover the ignorance and shortcomings of those who

preside over them as judges. We are indebted to Mr. Grady, as must also all those who have the welfare of India at heart, for the pains he has taken to remove this blot from our legal institutions, and we hope they will not be slow to recognise his labours. The work under review is admirably adapted to meet the requirement alluded to. It embodies in a form suited for a beginner the living principles of the law. It points out the decisions which have been overruled by more recent declarations of the law as laid down in the High Courts and in the Privy Council. The work contains very full chapters on the sources of the law, on marriage, adoption, minority, property, charges on property, disqualifications for inheritance, alienation (*a*) *inter vivos* (*b*) by will, inheritance or succession, partition, and the law of contract. The author intends it as a companion work to his Mohammedan law of Inheritance and Contract. Mr. Grady has very clearly pointed out the divergence in the different schools, marking the distinctions in each, so that it is adapted for each of the schools of law. He has attempted to supply the want of new editions of Strange and Macnaughten by embodying all therein that is now law, and has pointed out those doctrines which are not supported by the authorities cited, and has added the principles of recent decisions, without encumbering the work too much by reference to the names of cases, which often only tend to perplex and distract the student. We observe that the work is dedicated to Sir Edward Ryan, the Chief Commissioner of the Civil Service, and Vice-Chairman of the Council of Legal Education. We need hardly commend it to his especial attention as "a work most needed in his department, and one capable of removing the stigma that attach to us for sending out to India Civil Servants who have but imperfect knowledge of the laws they have to administer."

The Mayor's Court of London Procedure Act, 1857, with Notes and an Outline of the Practice, &c. By J. P. Yeatman, of Lincoln's Inn, Esq., Barrister-at-Law. London: Wildy. 1870.

TWELVE months back, in an article "The City Courts" (Vol. XXVIII, p. 208), we referred to this very useful City Court. The year just closed has still further increased the business in the Mayor's Court, while that in all the superior courts has diminished, and the dislike for County Court practice appears in no way abated.

This little book professes to be a guide to the procedure and practice of this most useful City Court, and certainly a reliable guide would just now be much prized by suitors. We regret to say that a perusal of Mr. Yeatman's manual does not enable us to recommend it. The author is evidently not himself a practitioner in the Court, and although, as he acknowledges in the preface, he has "borrowed very largely" from the Registrar's able work on the practice, we fear that a suitor relying solely on our author would find himself frequently embarrassed.

The author seems a strong partisan for corporation privileges, and considers the Court a Queen's Court, quite equal to the superior courts at Westminster, and some rather lengthy observations of a disparaging character are made on the judgments of the Exchequer Chamber and House of Lords in *Cox and Others v. The Mayor, &c., of London*; and in the preface the author desires to "draw attention to the ancient rights and privileges of the City, that the silent encroachments of time and envy may be swept away, and the Court restored to its former state of usefulness."

This is a bad opening for a guide. We are not told what has done the mischief and affected the former usefulness of the Court. Surely the author knows that within some twenty years the Court was so close and exclusive as to be limited to four counsel and six attorneys. Although the most ancient in the kingdom, does he consider opening the Court to himself and the whole profession an injury to City privileges? Hardly this, perhaps, but from some remarks he really does object to the Act, obtained by the City in 1857 for regulating and extending their jurisdiction, on the extraordinary ground of "its having crippled the powers of the Court," and the "apparent ignorance of the full extent of the power of the Court," shown by the framers of the Mayor's Court Act, 1857, on which this little book professes to be written.

The whole of the Mayor's Court Act is given without omitting the sections in judgment summonses and commitments practically repealed by the Debtors Act 1869, and including the old forms of procedure now wholly useless, the new rules, issued December, 1869, being only inserted by an afterthought in part of the impression after binding.

The Debtors Act is thus quoted (p. 49), "Now by the 32 & 33 Vict. c. 62, *except in cases under 50l.*, no person shall be imprisoned for making default in payment of a sum of money, except, &c. (then partly following s. 4 of the Act)." But where does our author get his exception we have italicised? There is no such restriction in the Act, and the only reference to debts not exceeding 50l. is, as to the issue of debtors' summons by the County Court.

On the procedure of the Court the author is equally careless. As an example, when referring in p. 12 to the Order in Council extending the Bills of Exchange Act to this Court, we are told that such order "very properly assumed that this being a Queen's Court, actions would be commenced by writ of summons in the Queen's name," &c. Also "that actions under the Bills of Exchange Act must be commenced by writ of summons." And, "that power was given by such Order in Council to make or alter writs, so that it appears *utterly monstrous* that actions are not commenced in a legitimate manner and consistently with the dignity of this high court by issue of the Queen's writ."

All this strong language because the Mayor's Court preserves the ancient practice of plaint, although when issued upon a bill of exchange the bill is copied at length, and full notice given defendant as required by the Bills of Exchange Act. This censure of the

practice is extraordinary in an author so anxious for the ancient rights and privileges of the Court, but reference to the Appendix containing the Order in Council itself shows how very little the author can be trusted. At the top of p. 6 of Appendix we read, "That all the provisions of the summary procedure on Bills of Exchange Act, 1855 (except, &c.) shall apply to this Court." And that the said several sections and schedules to the said last mentioned Act shall be read as if the word "*plaint*" had been used therein instead of the words "writ of summons" or "writ."

The author is indignant with the Court for not availing of s. 45 of the Act to make new rules, and comments on the "Recorder's task of making bricks without straw, the necessary result being that a great number of the orders made by the Court and Registrar are illegal and without warrant." And in a note pasted in to explain omission of the rules under the Debtors Act, we are told "that this Court has from time to time made rules of its own authority which materially alter the practice of the Court; no notice of them will be found in this work, because it is clear they are not of any force until sanctioned as required by the Act (s. 45)." These sweeping assertions are wholly unsupported by evidence, and not a single instance is given of even an alleged illegal order.

The observations on procedure occupy some dozen pages, and are substantially taken from the Registrar's work, and the useful tables of costs are copied verbatim from the same source.

The Corporation advisers doubtless intended that no objection to jurisdiction should be possible except by plea, and so far as the ordinary jurisdiction between the parties to an action is concerned, s. 15 may be considered conclusive on that point, but, with the carelessness so noticeable in the work before us, at p. 33 it is stated that "no plea to the jurisdiction is allowed in cases under 50*l*." This would be most deceptive and misleading, as by reference to s. 12, at p. 31, pleas to jurisdiction below 50*l*. are pleadable "where defendants do not dwell or carry on business in the City, or have not done so for six months before suit, or the cause of action did not in part arise therein."

The case of *Manning v. Farquharson* (30 L. J. Reports, Q.B., 22) certainly decided that *defendants* cannot obtain a prohibition on the ground of non-liability to the process of the Mayor's Court, but must in all cases personally appear and plead to the jurisdiction. The author, however, endeavours to make this case an argument against the law laid down by the House of Lords in Cox's case, where the *garnishee* in an attachment case was held entitled to prohibit the Mayor's Court on the ground that the bare fact of the *garnishee* having been personally found in the City gave the Court no power under the Custom of Foreign Attachment where the parties were not resident in the City, and no part of the cause of action arose therein. The *defendant* even in such a case as this would be obliged to plead, and before he can appear must give good bail to dissolve the attachment, but the position of a *garnishee* warned of an attachment when passing through Cheapside is clearly

very different. We agree with the author that the questions connected with Cox's case are very important, but do not see how they can be argued again, as unless the Legislature interferes, the decision of the House of Lords is quite final. "Foreign Attachment by the Custom of London" is too wide a subject for discussion here, but we think it may be worth the consideration of the City authorities, whether they should seek power to serve attachments anywhere in England similar to ordinary actions, upon proof that the cause of action in some part arose in the City. This would interfere very little with the usefulness of these attachments, and would probably enable the Mayor's Court to retain the same right as in ordinary cases, of trying the question of jurisdiction itself. The author's observations on the ancient powers of the Lord Mayor are interesting, and those on the vexed question of the inferiority of the Court pertinent enough from his view of the case.

A remark at p. 23 is quite new and somewhat startling. "The Court has *exclusive* jurisdiction in ejectment, formerly just the same as in the superior court, and now as described in the Common Law Procedure Act, 1852." Actions of ejectment are rarely, we believe, brought in this Court, and what the author means by "exclusive jurisdiction" we cannot imagine.

The Corporation have given notice of a Bill for the present Session to amend their Act affecting this Court, and we wish them every success. The present necessity for all affidavits to be sworn at the Court or before justices will doubtless be easily remedied, and power given to all commissioners of the superior courts in town and country.

As stated in a former article, we are not opposed to the foreign attachment of this Court reasonably carried out, and now that all creditors' remedies have been so much curtailed by the partial abolition of imprisonment for debt, we think this power might be conveniently extended, but so far as we can comprehend the "custom" on this subject, it has always been limited to cases within the Court's jurisdiction.

The author suggests making the Mayor's Court a portion of the superior courts. We cannot agree with him; the Mayor's Court is nearly the last of the municipal courts—practically the only one in the metropolis, as the Borough Court of Record is now seldom heard of, although still legally existent—and we would much prefer seeing the City of London Court (the City County Court, and a rival jurisdiction, in many respects, of the Mayor's Court) absorbed into the general County Court system, and thereby made completely a County Court, and the Mayor's Court left quite intact for the use of business men in the City. Should this be done, we are confident that in a very few years, the contrast of the practice of such a municipal court with all County Courts would materially assist in bringing about the reforms the latter tribunals so much need.

A Manual of the Usages of the Stock Exchange, and of the Law affecting the same, with Forms and Precedents of Pleadings. By Noel H. Paterson, B.A., Oxon., of the Middle Temple, Barrister-at-Law. London: H. Sweet. 1870.

"FENN on the Funds" has long and justly been regarded as the great English authority upon the subject of which it treats, and the little manual which is entitled above does not aim at superseding it, but, if it has any reference at all to it, aims rather at supplementing it. Thus, the former work, which is also very much the larger of the two, is principally, and, indeed, almost exclusively, *statistical*, consisting of a series or succession of tables, designed to show the origin, growth, and present state of the indebtedness of the different nations of the world; whereas the latter work, the manual, is entirely *legal*, and aims at being an epitome or brief statement of the principles of law applicable to the Stock Exchange, and it is to be judged of in that regard alone. But, inasmuch as the statistics of national indebtedness, and the rules of law affecting that indebtedness, are evidently kindred subjects, from the kindredness of their respective subject matters, it might reasonably be expected that this manual of Mr. Paterson's, if it should prove to be well executed, and to be tolerably complete, and also tolerably authoritative as an exposition of the law upon the subject, would become a companion volume to the work of Mr. Fenn, which, for its part, is all that can be desired.

We have very carefully perused the little work, and shall, by-and-bye, point out what we consider its faults; but, waiving those faults for the present, it must, in justice to the author, be admitted that his "Manual of the Law affecting the Stock Exchange" is possessed of a certain amount of intrinsic merit, or, at least, utility, as well for the student as for the practitioner of law. Thus it presents, in a compendious form, a tolerably continuous and complete exposition of the principles and cases applicable to its subject matter; and all that is wanting to render it a safe and trustworthy guide is a reference at large to the authorities referred to in the volume, such a reference being necessary, as well for the purpose of verifying the statement of the law given in the manual, as also, and chiefly, for the purpose of ascertaining the particular modifying circumstances of each particular case, the decisions of Courts of Equity proverbially turning upon seemingly trivial circumstances. This manual affords, moreover, a good general *résumé* of the law, within limits which are easily masterable, even by the unprofessional reader.

Although thus commendable in its plan and useful in its contents, the manual is very far from being either clear in respect of its logical structure, or complete and accurate in respect of its matter, or authoritative in respect of the mode of its execution—three faults of an undoubtedly serious character, which, unless they are greatly remedied in the next edition, seem likely to deprive it of the place

of honour which we should like to see it take, that, namely, of becoming a companion volume to the work of Mr. Fenn.

For, in the first place, it must unhappily be confessed that we experienced very considerable difficulty in discovering the logical method which underlies, as we believe, the three principal or concluding chapters of the work. Certainly the table of contents does not show this method, and therein it is most faulty, although therein also should have naturally lain its merit; nor again do any prefatory remarks at the beginning of the several chapters indicate the relation in which these chapters stand towards each other; and the inevitable multitude of details which are both usefully and well introduced into those chapters, only tends further to obscure the naturally unapparent plan of the work.

In the second place, the work is incomplete, not, indeed (so far at least as has occurred to us), in totally omitting any particular class of matters, but in neglecting to fully state and fully illustrate some few of the matters which it expressly handles. For example, the great case of *Pinkett v. Wright* (2 Ha. 120) is altogether omitted from this treatise, and is not even included in the list of cases referred to on p. 67 in illustration of the power of the directors of companies to refuse registration of shares. Moreover, the work is slightly inaccurate in one or two places; as, *e.g.*, in asserting broadly on p. 28 the absolute obligatoriness upon the general community of the customs or usages of the Stock Exchange. It is true indeed that, in the words of Lord Denman, in *Sutton v. Tatham*, every one who employs a broker must be taken to authorise him to act in accordance with the rules of the Stock Exchange; but then, when the last mentioned case, and the other cases quoted on this subject by Mr. Paterson are referred to at large, it is found that the authority in question is one entirely *relative*, and is not absolute in any sense, but is on the contrary confined to the relation which for the time, or on the occasion of any particular transaction, is established between the broker and the person employing him. For no usage of the Stock Exchange, nor indeed of any other body or society, is absolutely binding on the community, until recognised by the Common Law, or law of the community, as possessing such obligatory character.

And in the third and last place, this manual is extremely defective in a respect which it lay and lies with the author to remedy, we mean, in respect of its authoritative character. We admit that the narrow limits which the author has assigned himself in this manual necessitated in great measure the fault in question; but then an author is not the less to blame because he chooses to strait-lace his babies; and we do think that, considering the increasing cheapness of law publications, and the acknowledged want of such a work as this one of Mr. Paterson's might have been and yet might readily become, the author of it might profitably have extended and might yet extend the limits of his manual—say to twice or three times its present range—so as to set forth within this larger area the more leading cases with somewhat of detail, bringing such cases into *relief*, and arranging around them, in subordinate groups, the

less important kindred cases. But in truth as Mr. Paterson's work is at present constructed, the prominent fault of it is this, that it brings no one case into greater prominence than another, with the doubtful exceptions of *Grissnell v. Bristowe* and *Coles v. Bristowe*, but presents a large assortment of miscellaneous cases, huddled together after the manner of a Turner's landscape, which although it may be suitable in a sketch imitating the disorders of nature, is most unsuitable in a didactic treatise professing to methodize the disorders of the law. It is true that this fault of Mr. Paterson's manual is not peculiar to him, but is common to the majority of writers upon law; yet there cannot be imagined a more pernicious fault, and where it occurs in the works of juvenile authors, its effect is to deprive those works of the larger part of the merit which is often unquestionably due to the painstaking labours of their authors; whereas if juvenile writers would but contrive to make themselves the mere mouthpieces of the legislator and the judge, mere *oratores facundi*, they would infallibly acquire for their treatises an authority which their persons did not possess. We suspect the present author for a juvenile; yet we have been so much pleased with numerous features in his work, and we are also so much desirous of seeing a good and convenient manual upon the subject, that we have been at considerable pains to point out the faults of Mr. Paterson's work, at the same time that we allow its merits, in the hope that Mr. Paterson may be induced, by the kindly and suggestive criticism of this *Review*, to enlarge his manual in the next edition of it to a size larger, and to execute it in a manner which will entitle it to take its place side by side with the work of Mr. Fenn. That were a good alliance, and a noble spouse to win.

The Life Assurance Companies Act, 1870, with a Commentary on the Life Insurance Legislation of that Year: forming a Supplement to the "Law of Life Assurance." By C. J. Bunyon, M.A., Barrister-at-Law. London: Charles & Edwin Layton, Fleet Street. 1870.

THE passing of the Life Assurance Companies Act, and the recent decisions with respect to what is called Novation of Contract have rendered it necessary to the completeness of Mr. Bunyon's standard work on Life Assurance Law that he should supplement it by the present publication. Both these subjects have been considered at length in the *Law Magazine* (Vol. XXIX., p. 193, and Vol. XXX., p. 96), and it is not necessary, therefore, to enlarge upon them in the present notice. It is sufficient to say that our views receive confirmation from the independent thought of so competent an authority as Mr. Bunyon is.

He criticises with some severity the draughting of the Act, which he describes as "an actuary's Bill rather than a lawyer's," though he complains of it as not defining what an "actuary" is. He suggests that the opportunity should have been taken to require from the

persons desiring to perform the functions of actuaries under the Statute some certificate of competency, such as the "Institute of Actuaries," which (he says) "comprises the majority of the profession," could grant. In this we hardly go with him; first, because the minority not comprised in that body is one very worthy of respect; second, because the number of persons who act as "professional" actuaries must always be extremely limited. Every important company must continue to have, as hitherto, its own actuary within its walls, who, as he cannot be constantly employed in purely actuarial work, is also the secretary, or agent, or accountant of the company, and cannot, therefore, be a strictly "professional" actuary. We think the Act makes sufficient invasion on the abstract right of a company to manage its own affairs, without requiring that the officer they select to perform a particular function should have the certificate of a merely voluntary association as to his ability to do it.

Mr. Bunyon thinks, and we concur with him, that the sections of the Act which enforce compliance by penalties will probably be efficient, and that not so much by the money value of the penalties, as by the exposure which the Board of Trade is authorised to make of any Company disobeying the Act. Their stringency has been greatly increased since the measure was first introduced into Parliament by Mr. Stephen Cave in 1869, and we then thought it would be "as effective as mere legislation can be." It is quite possible, however (though we hope, under the circumstances, hardly probable), that the only effect of the Act may be to fill the pigeon-holes of the Joint Stock Registry, as they have been filled before, with documents from which no one, however deeply it may concern him, will care to extract the truth.

A notice of s. 10 of the Married Women's Property Act of last Session also comes within the scope of Mr. Bunyon's pamphlet, and he comments upon it with unqualified approval, and not without some quite justifiable self-satisfaction in having to some extent forestalled it by the issue of "Settlement Policies" from the company with which he is connected. We have already heartily endorsed his views (*Law Mag.* XXIX. 205-207), and we share his satisfaction in their realisation.

Report of the Case of *The Queen v. Nicholson*, for removing Shingle from the Foreshore at Withernsea. London: Butterworths. 1870.

THIS is a little publication of considerable interest with reference to seashore rights. It appears that in many parts of England the sea is making great encroachments in consequence of the removal of shingle—the natural protection of the coast—the result of which is that the sea makes breaches or gaps, and covers by degrees large tracts of land. Thus, in 1850, a report was made to the Admiralty of a breach made by the sea at the entrance of the Humber; and on the Holderness coast the actual waste has been computed at the rate

of several yards a year. At Hornsea 1000 tons of beach shingle had been taken away in a week; and it appears that the roads are commonly made with it in those parts of the country. The consequences threatened to be so serious that the Board of Trade resolved to put a stop to the practice, by asserting the rights of the Crown to the foreshore, and hence an information was laid before the magistrate at Hull which resulted in a conviction. Mr. Kemplay appeared for the defendant and suggested a case for the Court of King's Bench, which was agreed to, and the case in due course will be stated and argued. In the meantime this is a correct and authentic report of the hearing before the magistrate, with the information and depositions, and the documentary evidence, including the enactments and the order of the Board of Trade on the subject; in short, all the materials of the case, with the judgment of the magistrate, all within the compass of fifty pages. It is a complete statement of the law and facts of the subject, and is of great interest to all who are in any way interested in the rights of the seashore.

A Treatise upon the Law applicable to Negligence. By THOMAS WILLIAM SAUNDERS, Esq., of the Middle Temple, Barrister-at-Law, Recorder of Bath. London: Butterworths. Dublin: Hodges, Foster & Co. 1871.

ALTHOUGH we by no means admit the accuracy of the author's statement, namely, that the law relating to the subject of negligence is in a somewhat obscure state, nevertheless, a moment's consideration will show that the statement has something of truth in it. The real difficulty lies in the fact, that the law applicable to cases arising from negligence is difficult to apply by reason of the infinite diversity of circumstances out of which legal responsibilities flow, and the varying and diverse views of particular circumstances that must necessarily be held by different people; hence it is impossible that the law can be administered with absolute certainty or uniformity, where there is such ample room for divergence in judicial opinion. Take that class of case for instance to which public attention has recently been called, in which passengers upon a railway have been injured whilst alighting at stations, (*Siner v. Great Western*, 37 L.J. Ex., 98; *Foy v. London, Brighton, and South Coast Railway Company*, 18 C.B., N.S., 225; *Bridges v. North London Railway Company*, L.R.; 5 C.P., 439 N.; *Cockle v. London and South Eastern Railway Company*, L.R.; 5 C.B., 437); it is no doubt "to be regretted that the law upon so important and constantly recurring a question" should be in an unsettled condition, but it is impossible for it to be otherwise, whilst men continue to possess separate judgments, and attach different values to facts.

Our view is, that the law is rather difficult to apply, than that it is itself obscure; and we think Mr. Saunders has earned the thanks of the profession by the way in which he has dealt with

the subject. The book is admirable; while small in bulk, it contains everything that is necessary, and its arrangement is such that one can readily refer to it. A knowledge of the law may be, perhaps, in the widest sense unattainable, but a knowledge of the places where the law may be found is in these days attainable very readily, so many have entered upon the wide field of legal authorship, and mapped and planned it out for others, and amongst those who have done good service, Mr. Saunders will find a place.

A Treatise on the Law and Practice relating to Vendors' and Purchaser of Real Estate. By J. Henry Dart, of Lincoln's Inn, Esq., Barrister-at-Law. The Fourth Edition by the Author and William Barber, of Lincoln's Inn, Esq., Barrister-at-Law. London: Stevens & Sons.

THE single volume of which this work formerly consisted has been made to expand and divide itself into two volumes, each of them larger than the original single volume; and the simple dedication of friendship has had to give place to the ostentatious dedication of ambition, the name of Mr. Christie having been replaced with that of the Lord High Chancellor of Great Britain. The third edition having appeared in the year 1856, a period of fourteen years separates that edition from the present one, which may be roughly described as a reproduction of the third, incorporating all the enactments and decisions which have been passed and entered up within the interval. Now it is both useful and satisfactory to obtain from the accurate and experienced mind of Mr. Dart a harmonised statement of the old and new law; and we therefore not a little regret that from whatever cause the important Statutes of the year 1870 regarding the property of married women, apportionment, naturalisation, stamps, and the abandonment of railways, should have received only the most cursory notice in the list of the addenda. But this unhappy feature or defect in the work was doubtless not within the power either of the author or of his co-editor to avoid.

The general plan of the original work is preserved. There are, however, two chapters interjected upon subjects which are entirely new, namely, "Registration of Title," and "Powers of the Court of Chancery to sell under Recent Statutes." The author proceeds at once to the great subject-matters of his treatise, which are the various duties mutually incumbent upon vendors and purchasers of real estate, and the various modes in which those duties respectively are incurred, are modified, are perfected, and are ultimately discharged or else receded from. And in the execution of that his purpose, he discusses the particulars and conditions of the intended sale, the sale itself, and its accompanying agreement, or (as it is thenceforth called) contract of sale upon the rights of the parties to it, the abstract which in due course follows upon the contract, the production and examination of deeds for the purpose of verifying the abstract, the customary requisitions regarding title, the search for incumbrances,

the preparation of the conveyance, and the completion of the purchase. At this stage it might have been supposed that the author's task was ended, and certainly the *positive* part of his work is here complete; but the treatise is extended further, for the purpose of discussing which may be called the *negative* or remedial portion of it, the mutual rights which arise to vendors and purchasers of real estate upon the happening of anything untoward after the completion of the purchase, together with the various remedies provided and made available for the purpose of establishing those rights.

We have been strongly tempted to present the reader with a summary or analysis of the chapter in which the author treats of the Specific Performance of the Contract of Sale; but space forbids us to do more than mention that in that one chapter the author conducts us with the most painstaking clearness through all the stages of the suit (from the beginning to the end of it) which it is necessary to institute in order to make this remedy available, and the merest novice in the profession could not fail of conducting the suit to a successful issue if he but scrupulously followed this statement of Mr. Dart.

In conclusion, we have to add that the treatise is furnished with a very full and valuable table of contents, with a list of the cases cited and of the Statutes referred to in the work, and with an index which itself extends to the large number of 180 pages. We have moreover examined the index somewhat critically, and we have also compared it with the index to the third edition; and as the result of such an examination and comparison, we have not only found the references correct, but have also detected more particularly under the words Abstract, Argument, Conditions of Sale, Contract, Conveyance, Covenants, Incumbrances, Mortgage, Mortgagee and Mortgagor, Notice, Purchase Money, and Specific Performance, a large number of insertions which were not included in any of the indexes to the previous editions. The work is therefore a most excellent one in every way and at every part of it; and but for the apparent inclination of the author or his co-editor, or of both, to sacrifice the body to the head of the profession, our praise of it should have been unqualified and entire.

A Treatise on the Validity of Verbal Agreements, as affected by the Legislative Enactments in England, and the United States, commonly called the Statute of Frauds. By Montgomery H. Throop. London: Stevens & Haynes. 1870.

THIS is the first of two volumes of a work which promises to be the most valuable explanation we have yet possessed of the Statute of Frauds. Mr. Throop is an American, and the work is primarily intended for the use of members of the American Bar, but the law, in most of the States of the Union, is either borrowed directly from the English Statute, or without alteration, or is borrowed in part, or is in some cases borrowed with slight alterations. The first volume

begins with setting out at length the text of the original Statute. Then follow naturally Lord Tenterden's Act (9 Geo. IV. c. 14), and those sections of the Mercantile Law Amendment Act (19 & 20 Vict. c. 97), which provide that in the cases within the Statute of Frauds no special promise shall be held invalid to support an action, suit, or other proceeding, by reason only that the consideration does not appear in writing, or by necessary inference from written document. The several American Statutes come next. We have, then, a general survey of the Statute, containing its history and general purpose. Part first treats of special promises of executors and administrators to answer damages out of their own estates. Part second of special promises to answer for the debts, defaults, and miscarriages of another person. This brings us to page 670. Part third is of agreements made upon consideration of marriage. This, with a very copious index, concludes Vol. I., which contains 800 pages. When we have the second volume before us we shall be better able to judge of the work as a whole, and shall so speak of it. At present it is sufficient to say that the work displays great industry, is a credit to American typography, and, so far as we can judge from the volume before us, is written by one who is not a mere compiler of cases, but who has something of the spirit of Kent and other American jurists. If the second volume bears out the promise of the first it will form by far the most comprehensive work which we yet possess on a subject of prime importance to lawyers. It is only right to mention that, though an American work, there can scarcely be an English case which is not brought in by way of illustration, and that the American cases themselves will often be as much to the point as those backed by judicial authority in this country. The edition before us is published in England by Messrs. Stevens & Haynes.

The Married Women's Property Act, 1870: Its relations to the Doctrine of Separate Use; with Notes. By J. R. Griffith, B.A., Oxon., of Lincoln's Inn, Barrister-at-Law. London: Stevens & Haynes. 1870.

THE object of this little work, as stated in the preface, is to give a summary of the cases decided in Courts of Equity on the rights and liabilities of married women in relation to their separate estate, and to suggest some changes, which may probably arise in the practice of the courts from the new status given to them by the Act. The introduction consists of a review of the principal decisions in Equity during the last thirty years upon the rights and liabilities of married women. We think the statement that "in courts of law a married woman had, until the passing of the Act of the last Session, no recognised status, her position was one of disability and immunity" open to exception as somewhat too sweeping. Of course it is correct, provided it be understood with proper reservations; and, addressed as it is to lawyers, is not likely to mislead. What is meant is that a married woman had not any independent position, as a party in an

action at law. The proposition taken without any qualification, might seem to imply that a married woman could not take proceedings in the Divorce Court or in a police court. Of course it is only to the form of expression used by Mr. Griffith to which we take exception; and in any case it is not so absurd, as the statement made a short time ago by a legal journal, that a married woman has no legal existence. Mr. Griffith's comments on the probable operation of the Act are, of course, of a purely conjectural character, as no decision of any moment has, so far as we are aware, been pronounced. With regard to the 12th section, which apparently gives a husband power, by marrying a lady of property without a settlement, to defraud his wife's ante-nuptial creditors, Mr. Griffith is of opinion that a Court of Equity would not tolerate any such proceeding. Mr. Griffith cites a dictum of Vice-Chancellor Stuart in *Columbine v. Penhall*, 1 Sm. & Giff., 228, 256, that "where there is evidence of an intent to defeat and delay creditors, and to make the celebration of marriage part of a scheme to protect property against the rights of creditors, the consideration of marriage cannot support such a settlement;" and the case of *Bulmer v. Hunter*, L.R., 8 Eq., 46, where a man married a woman with whom he had been cohabiting, and settled property upon her, and thereby defrauded an ante-nuptial creditor. Vice-Chancellor Malins set aside the settlement as against the creditor. Mr. Griffith's arguments might very fairly be employed by counsel in argument, but, as Mr. Griffith is fully aware, they do not cover the whole of the proposition for which he contends. And it might fairly be urged on the other side, that for a Court of Equity to do what Mr. Griffith supposes it to do would be to alter the express words of an Act of Parliament. It may be said that this would not be a greater stretch of authority than the manner in which Courts of Equity have dealt with certain sections of the Statute of Frauds. But at the present day Courts of Equity would be more reluctant to over-ride the words of a Statute than at the time when the Statute of Frauds was passed.

We may observe, in conclusion, that though Mr. Griffith's work contains much with which legal readers will be perfectly familiar, it is a well-digested summary of the decisions bearing upon the subjects treated of in the Act, and is well worth perusal.

An Elementary View of the Proceedings in a Suit in Equity, with an Appendix of Forms. By Sylvester Joseph Hunter, B.A., of Lincoln's-Inn, Barrister-at-Law. Fifth Edition, by George Woodford Lawrence, M.A., of Lincoln's-Inn, Barrister-at-Law. London: Butterworths, 7, Fleet Street. 1871.

EDITION rapidly follows edition of this little work. As an excellent introduction to the study of Chancery practice the book has established its position, and we think the editor has done wisely in merely introducing such amendments as the alteration in the law by Statutes and Orders requires, and abstaining from any attempt to make it a manual of practice.

The Law of Naturalization as amended by the Naturalization Acts, 1870. By John Cutler, B.A., Barrister-at-Law, Professor of Jurisprudence at King's College, London. London: Butterworths. 1871.

PROFESSOR CUTLER has published a useful little book on the "Law of Naturalization." He commences with a treatise on the law as it was, and then gives the Act of last year to show the law as it is. In this he considers, (1.) Who were aliens before the Statutes of last Session? (2.) Who were British subjects? (3.) How a British subject could become an alien; and (4.) How an alien could become a British subject. On the subject of the maxim *nemo potest exuere patriam*, Mr. Forsyth, in his "Cases and Opinions on Constitutional Law," gives a long opinion from Mr. Reeves, the author of the well-known legal history, which curiously illustrates the inflexibility of the old law of naturalization. In this Mr. Reeves maintains, *apropos*, we believe, of the case of *Doe v. Acklam*, that every citizen of the United States whose ancestor was under English allegiance remained still (*circa* 1818) under the allegiance of his sovereign lord, King George III., and that the recognition of American independence had not altered his position in the least. On one point connected with the law of allegiance we should be glad to receive information from any of our readers or from Professor Cutler. Would a Hanoverian born previous to the accession of our present Queen have been an alien? On the application of every principle deducible from Calvin's case he ought not to be so considered. The case must have occurred. Mr. Chisholm Anstey, whose singularly great knowledge of constitutional law is known to many, told the present writer that he believed that the case had come before the law officers of the Crown about 1840, and an opinion had been given in accordance with the decision in the case of the *Postnati*, but we have not been able to find any statement of the fact. Professor Cutler's book is a useful summary of the law, and of the changes which have been made in it. The Act is given in full, together with a useful index.

The American Law Review, October, 1870. Boston: Little, Brown, & Co.

THIS number contains, in addition to a lengthy summary of events, book reviews, and a selected digest of state reports, the following articles—(1.) "Codes and the Arrangement of the Law." (2.) "The Trials of Troppman and Prince Bonaparte"—a very interesting article. (3.) "Degrees of Negligence." (4.) "Suits between Firms with a Common Member." Altogether the contents form an excellent part.

The Practice of the Court of Probate in Common Form Business.

By Henry C. Coote, F.S.A., Proctor in Doctors' Commons ; also
a Treatise on the Practice of the Court in Contentious Business.

By Thomas H. Tristram, D.C.L., Advocate. Sixth Edition.
London : Butterworths. 1871.

WE regret that, owing to some mishap, the reviewer of this book had not sent in his copy on going to press. A notice will appear in our next number.

The Albany Law Journal. Albany, New York : Weed, Parsons, & Co.

THIS nicely got-up weekly periodical continues to interest the profession with a series of amusing and well-selected reminiscences of the legal world, both at home and abroad. As a collection of anecdotes concerning law and lawyers, no publication hitherto has approached it in the great variety, and in many cases, originality, of its contents. Of late the journal has become, as was intimated that it would, less factious than formerly, but not the less pleasing on that account, as the pages devoted to legal literature are sprightly and ably written. The Digest of Decisions and Reports of Cases are not the least important part of the contents of this journal.

The Scottish Journal of Jurisprudence and Law Magazine. Edinburgh : T. & T. Clark.

THE numbers for the quarter contain among the usual notes of cases, &c., a translation of the title of the *pandects ad legem aquilianam* ; some remarks on that portion of the Report of the Scotch Law Courts Commission by the dissentient members of that body, chiefly concerning the Inner and Outer House ; the Annual Addresses at the opening of the session of the Juridical Society and of the Scottish Law Amendment Society ; and some well-timed observations on the administration of justice in Scotland as compared with some other systems.

PUBLICATIONS RECEIVED.

The Law Times.
The Irish Law Times.
The Law Journal.
The Canada Law Journal.
The Australian Jurist.
The United States Jurist.

Events of the Quarter, &c.

RULES UNDER THE JURIES ACT.

THE following rules of Court, made by the Judges of the Superior Courts in pursuance of the Juries Act, 1870, are applicable to trials in London and Middlesex :—

(1.) That a juror summoned to attend for the trial of common or special jury causes in London or Middlesex, not having had notice on a previous day not to attend, who appears in obedience to his summons and continues ready to serve during the day if required, shall be considered as having been within the meaning of "The Juries Act, 1870," in attendance, and as being entitled to be paid according to the provisions of the Statute.

(2.) That the sum of 3*l.* shall be deposited with the associate upon the entry of every common jury cause in London or Middlesex by the party entering the same.

(3.) That upon the entry of every special jury cause in London or Middlesex, except as hereinafter mentioned, the sum of 12*l.* 12*s.* shall be deposited with the associate by the party so entering the cause.

Provided that where, *before* the entry of such cause for trial by any party, it has been made a special jury cause by the opposite party, then the party entering the cause may, if he think fit, give notice to such opposite party of his intention to deposit with the associate the sum of 3*l.* only, and to enter the cause for trial by a common jury, and may thereupon enter the cause to be tried as a common jury cause and deposit with the associate the sum of 3*l.* only; and in that case, unless the opposite party deposit with the associate the further sum of 9*l.* 12*s.* within one day after such entry, the cause shall be tried by a common jury as a common jury cause, unless a judge otherwise order.

Provided also that where a party to a cause has obtained an order that a special jury be struck for the trial of a particular cause, he shall on or before giving notice to the sheriff of such order deposit with the sheriff the sum of 25*l.* 4*s.*, otherwise the said order shall be of no avail, and the said cause shall be tried in the same way as if no such order had been made. The sheriff shall forthwith pay over to the associate the money so deposited with him.

(4.) Where a cause, *after* having been entered in London or Middlesex as a common jury cause, has been ordered to be made a special jury cause by rule or order, the sum of 9*l.* 12*s.*, being the difference between the deposit of 3*l.* made at the time of entry and the sum of 12*l.* 12*s.*, shall be forthwith deposited with the associate

by the party obtaining such rule or order; and in default the cause shall, notwithstanding such rule or order, be tried by a common jury, unless a judge otherwise order.

(5.) That no second deposit shall be made on the re-entering of a cause for trial which has been withdrawn before commencement of trial.

(6.) That the deposits so made in London and Middlesex respectively in special jury causes shall form a fund for the payment of special jurors in attendance as aforesaid.

(7.) That the deposits so made in London and Middlesex respectively in common jury causes shall form a fund for the payment of common jurors in attendance as aforesaid.

(8.) That the funds aforesaid for London and Middlesex shall be kept separate and distinct for all purposes, and shall be applicable solely to the remuneration of jurors in London and Middlesex respectively.

(9.) That in every case in London or Middlesex in which the sum of 3*l.* only has been paid on the entry of a cause, whether entered as a special jury cause or not, if the cause is afterwards tried as a special jury cause, the sum of 3*l.* paid on entry shall form part of the special jury fund. And that in every such case in which the cause is afterwards tried as a common jury cause, the sum of 3*l.* paid on entry shall form part of the common jury fund.

(10.) That in all causes, whether tried by a special jury or by a common jury, the sum of 3*l.*, if deposited by the successful party, shall be recoverable as costs in the cause, if he be otherwise entitled to such costs.

(11.) In special jury causes, the further sum of 9*l.* 12*s.*, if deposited by the successful party, shall be deemed to be costs of the special jury, and shall be recoverable as costs in the cause if he be otherwise entitled to such costs, and the judge certify that the cause was fit to be tried by a special jury.

(12.) In all causes already entered and now standing for trial by special juries, the party who has made the cause a special jury cause shall forthwith, and before trial, deposit the sum of 12*l.* 12*s.* with the associate, and if he make default the other party may pay the same sum; but if the party who has made the cause a special jury cause fails to pay the said sum of 12*l.* 12*s.*, the other party may pay the sum of 3*l.*, and thereupon the cause shall be tried as a common jury cause; and if the sum of 3*l.* be not paid to the associate by either party, the cause shall be struck out unless the judge otherwise order.

The following *Regulæ Generales* are applicable to trials in other counties and places than London and Middlesex:—

(1.) That on every day during the assizes on which any civil cause is to be tried, the judge presiding in the civil Court shall direct that a sufficient number of jurors be taken by ballot from the common jury panel, who shall be the jurors during that day to try civil causes, and shall not during that day be called on to try criminal cases unless needed and required to do so by the judge presiding in the criminal Court.

The residue of the panel shall be the jurors to try criminal cases during that day, and shall not be called on to try civil causes unless needed and required to do so by the judge presiding in the civil Court.

The jurors thus taken by ballot, and who continue in attendance during the day, and such others as actually sit on the trial of any civil cause or causes, shall be considered as the jurors in attendance for that day, and entitled as such to the payment of 10*s.*: Provided that the names of those jurors who have already been taken by ballot for one day shall not, except by order of the judge, be included in the ballot for any other day during the assizes until all other names have been drawn.

(2.) That the sum of 3*l.* shall be deposited with the associate upon the entry of every common jury cause for trial at the assizes by the party entering the same.

(3.) That in every cause wherein notice is given to the sheriff by either of the parties to the cause, that such cause is to be tried by a special jury, the party giving such notice shall before or at the time of giving such notice deposit with the sheriff the sum of 12*l.* 12*s.* towards the fund for the remuneration of the special jurors; and in default of such deposit such notice shall be of no effect. The sheriff shall forthwith pay over to the associate the money so deposited with him.

(4.) The sum of 12*l.* 12*s.* shall be deposited with the associate upon the entry of every special jury cause for trial at the assizes by the party entering the same, unless he has previously made such deposit of 12*l.* 12*s.* with the sheriff as before-mentioned.

Provided that where, *before* the entry of such cause for trial by any party, it has been made a special jury cause by the opposite party, then the party entering the cause may, if he think fit, give notice to such opposite party of his intention to deposit with the associate the sum of 3*l.* only, and to enter the cause for trial by a common jury, and may thereupon enter the cause to be tried as a common jury cause, and deposit with the associate the sum of 3*l.* only; and in that case, unless the opposite party deposit with the associate the further sum of 9*l.* 12*s.* within one day after such entry, the cause shall be tried by a common jury as a common jury cause, unless a judge otherwise order.

Provided also that where a party to a cause has obtained an order that a special jury be struck for the trial of a particular cause, he shall, on or before giving notice to the sheriff of such order, deposit with the sheriff the sum of 25*l.* 4*s.*, otherwise the said order shall be of no avail, and the said cause shall be tried in the same way as if no such order had been made. The sheriff shall forthwith pay over to the associate the money so deposited with him.

(5.) Where a cause *after* having been entered as a common jury cause has been ordered to be made a special jury cause by rule or order, the sum of 9*l.* 12*s.*, being the difference between the deposit of 3*l.* made at the time of entry and the sum of 12*l.* 12*s.*, shall be forthwith deposited with the associate by the party obtaining such rule or

order; and in default the cause shall, notwithstanding such rule or order, be tried by a common jury, unless a judge otherwise order.

(6.) That in all causes, whether tried by a special jury or by a common jury, the sum of 3*l.*, if deposited by the successful party, shall be recoverable as costs in the cause if he be otherwise entitled to such costs.

(7.) In special jury causes the further sum of 9*l.* 12*s.*, if deposited by the successful party, shall be deemed to be costs of the special jury, and shall be recoverable as costs in the cause if he be otherwise entitled to such costs, and the judge certify that the cause was fit to be tried by a special jury.

(8.) It is further ordered that in all causes pending, and which are already entered for trial at the ensuing assizes, the plaintiff in any common jury cause shall, before the cause is tried, deposit the sum of 3*l.* with the associate for the purpose of the fund to be provided under the Statute for the remuneration of the said jurors to try common jury causes; and in case the plaintiff shall make default in paying such deposit the other party in the cause may pay the same, and in default of the same being paid the cause shall be struck out unless the presiding judge shall otherwise order.

(9.) In all causes pending, and which are already entered for trial by special juries at the ensuing assizes, the party who has made the cause a special jury cause shall forthwith and before trial deposit the sum of 12*l.* 12*s.* with the associate, and if he make default the other may pay the same, but if the party who has made the cause a special jury cause fail to pay the said sum of 12*l.* 12*s.* the other party may pay the sum of 3*l.*, and thereupon the cause shall be tried as a common jury cause, and if the sum of 3*l.* be not paid to the associate by either party, the cause shall be struck out unless the judge otherwise order.

PROPOSED ECCLESIASTICAL LEGISLATION.

THE following letter has been addressed to the Bishop of London by his Grace the Archbishop of Canterbury :—

“ San Remo, Italy, Dec. 27, 1870.

“MY DEAR BISHOP OF LONDON,—As the time is approaching when such ecclesiastical measures as are to be submitted to Parliament next Session must be matured, I think it well that the clergy and laity should have an opportunity of quietly considering them in the interval which has still to elapse before the meeting of Parliament, and of the Convocation of Canterbury.

“I am in communication with the Archbishop of York, and hope that the two Provinces may be able to act in concert with reference to such measures as are desirable, and I now take the constitutional step of publicly addressing you as Dean of the Southern Province, in order that the attention of our own clergy and laity may be directed to what we deem desirable.

“It cannot be denied that many important matters of ecclesiastical reform, which have been long talked of, have hitherto been

unaccountably thwarted in their passage through the Legislature. The good hopes, for example, which were entertained by all of us for last Session came to nothing, and, with the exception of the Bishops' Retirement Act, the only considerable improvement in an ecclesiastical system, which has been effected of late years, is the revival of the ancient office of Bishop Suffragan, and this was accomplished by the resolution of Her Majesty's Government, at the request of the heads of the Church, and at the suggestion of the Convocation of Canterbury, to revive an already existing Statute which could be acted on without fresh legislation. Last Session the proposal to sanction a new Table of Lessons in the Prayer-book, to improve the law of ecclesiastical dilapidations, to reform the ecclesiastical courts, and other important measures of reform, though it was known that they were generally acceptable, both to clergy and laity, and most of them had received the distinct sanction of the clergy in their constitutional corporate capacity, all failed to command such attention as was necessary to insure their passage through Parliament.

"My belief is that these failures are, in part at least, attributed to the fact that sufficient publicity was not given to the measures intended to be proposed, and thus they had not received through general discussion that distinct sanction of public opinion which seems necessary in England for all important changes. It is with the view of obviating, if possible, this difficulty in the coming year that I now thus formally address your lordship.

"(1.) I take it for granted that Her Majesty's Government cannot allow the proposed change in the Table of Lessons, as embodied in the Lectionary Bill of last Session, to fall to the ground. Important branches of industry have been disturbed by the failure of that Bill, and great confusion, both in the University printers' and Queen's printers' offices, has followed. Yet it seems probable that the same opposition which caused the withdrawal of the Bill last Session will again prove fatal to it unless its scope be enlarged. The Bill professed to embody a recommendation of the Ritual Commission, and many felt that other most important recommendations of that Commission, on which there was little or no diversity of opinion in the Church, ought to have been embodied in it, and that otherwise the original promoters of the movement which led to the appointment of the commission might be thought to have been treated deceitfully. It is true that the most vexed questions, affecting the vestments of the clergy and certain recently introduced extravagances of the Ritual will, in all probability, be settled by the courts of law before Parliament meets, and it seems to have been thought wise by the Ritual Commission to await these decisions of the courts, before calling for legislation on such points. But there remain a great many important improvements, respecting which there is scarcely any difference of opinion in the Church, which have been recommended by that Commission. I may instance an improvement respecting the use of the Burial Service, a power of abridging the daily Church Service with the consent of the diocesan, a distinct

recognition of the propriety at times of dividing the several parts of the Sunday service, and some amendment of the rubric regulating the use of the Athanasian Creed, as matters on which there seems to be an almost universal consent in the Church.

"(2). Connected with the same subject as the proposal of the Ritual Commission to give the communicant laity of each parish some voice in the ordering of the mode of conducting the Church services, not intended to be everywhere entirely alike, was Lord Sandon's measure upon the appointment of parochial councils. There was also a clause of a similar nature in Lord Shaftesbury's Ecclesiastical Courts Bill. From all these several proposals some measures may well be devised which shall give the laity of each parish their legitimate influence, and yet not interfere unnecessarily with the discretion of the parish clergy.

"There remain—

"(3.) The Archbishop of York's Ecclesiastical Dilapidations Bill.

"(4.) The Bishop of Winchester's Bill for allowing disabled clergymen to retire from their cures.

"(5.) The Bill advocated by the Duke of Marlborough in the House of Lords to restrain the sale of next presentations to livings.

"(6.) The proposal to reform the Ecclesiastical Courts, which Lord Shaftesbury has for two Sessions brought before the attention of the House of Lords.

"The proposals to remove the abuses attendant upon the sequestration of benefices which occupied the attention of a Select Committee of the House of Lords last Session.

"I do not think that we shall have done our duty to the Church and nation till all these questions have been finally settled. I hope that such of them as have not yet been formally approved by our convocations may speedily be discussed in these bodies, and that both clergy and laity will lose as little time as possible in making their opinions known to the Legislature. It seems to me to be the duty of the heads of the Church to consult at once with Her Majesty's Government as to the best means to be taken for giving effect to the wishes of Churchmen on these important reforms. Some of the measures may with great propriety be introduced in the first instance in the House of Commons, either by the Government or by some of those private members who so well represent our feelings in that House, and have secured to themselves the attention of Parliament. Meanwhile, it seems to me also desirable that when the proper time comes joint committees of the two convocations of Canterbury and York should be appointed to discuss and communicate with the Government on such of these proposals as have not yet been fully considered by the clergy of both provinces.—Believe me to be, my dear Bishop of London, yours very sincerely,

"(Signed)

"A. C. CANTUAR.

"The Right Rev. and Right Hon. the
Lord Bishop of London."

LAW UNIVERSITY.

THE following are the proposals of the Legal Education Association for a University, or School of Law :—

(1.) To place the general course of studies and the examinations preliminary to and requisite for admission to the practice of the law, in all its branches, under the management and responsibility of a Legal University, to be incorporated in London.

(2.) To make the passing of suitable examinations in this University (or of equivalent examinations in the legal faculty of some other university of the United Kingdom) indispensable to the admission of students to the practice of the Bar, or to practise as special pleaders, certificated conveyancers, attorneys or solicitors ; such examinations, and the courses of study preparatory thereto, being either combined or divided as may be desirable and convenient with a view to the knowledge of the general principles of law, or to the acquisition of the special attainments necessary for particular branches of the practice of the legal profession.

(3.) To offer the benefits of the course of study and examinations to be afforded by the University to all classes of students who may desire to take advantage of them, whether intending or not intending to follow the legal profession, in any of its branches, and whether members or not of any of the Inns of Court.

(4.) To enable the University to confer (among other honours) such degrees in law as are conferred by other universities.

(1.) The fundamental principle of this proposal is to distinguish between legal education and the practice of the legal profession, making the former necessary as a condition precedent to the latter.

(2.) In accordance with this principle, the Association does not propose to ask on behalf of the University for any power to confer the status or degree of barrister-at-law, or to admit students to the right of practising either at the Bar, or as conveyancers or special pleaders below the Bar. It proposes to leave the regulation of the right of practising at and below the Bar, the other conditions (*i.e.*, other than legal study and examinations) of admission to practise, and the exercise of discipline (including the power of exclusion from practice) over all such practitioners, to the authorities to whom it is now, or to whom it may from time to time be, by law committed.

(3.) In like manner, the Association does not propose to interfere in any manner with the admission of attorneys and solicitors to practise in any of the courts of the realm, or with the disciplinary or other powers of those courts over attorneys or solicitors, as their own respective officers.

(4.) The Association is desirous of constituting the University under the government of a Chancellor, Vice-Chancellor, and Senate, with the Crown as visitor ; according to the analogy of the other universities of the realm.

(5.) In the constitution of the Senate they would desire to see those bodies which now represent the organised power and opinion

of the different branches of the legal profession (*i.e.*, the Inns of Court, and the Incorporated Law Societies, Metropolitan and Provincial) suitably represented; and it would, in their judgment, be desirable that a connection should also be established between this University and the Universities of Oxford, Cambridge, and London (all of which have their legal faculties, increasing daily in importance), by the presence upon the senate of some members nominated by those Universities. But, as to all details of this nature, it is felt to be necessary, before arriving at any final scheme, to ascertain how far the desired co-operation may be expected from all or any of the learned bodies above-mentioned, and under what conditions (if at all) it may be obtained.

(6.) In the event of the University being established as proposed, the functions of the now existing Council of Legal Education would necessarily cease; and the fees payable by students under the regulations of the University, together with such contributions as might be made by the societies associated in its government (which, from the liberality of those bodies, would doubtless not be less than their present contributions to a similar object), would form the Academic Fund, out of which the stipends of the professors and readers, and all other necessary expenses of the University would be defrayed.

(7.) It is proposed that the University should be created by royal charter, after the passing of an Act enabling the Crown to provide by charter for objects which might not in themselves be within the royal prerogative.

SHERIFF JAMESON OF ABERDEEN.

DEATH has recently made heavy calls on the supreme and local tribunals of Scotland. Not the least distinguished in the mournful catalogue is that of the respected gentleman above-named. He was a son of Andrew Jameson, who for upwards of forty years was Sheriff-Substitute of Fifeshire, and for many years the father of that class of judicial functionaries. He entered into office when Sheriff Courts had small jurisdiction and were of less repute. A sheriff-substitute was then little more than the clerk or secretary of the principal and non-resident sheriff, and his salary was so illusory that it was supplemented by all sorts of extraneous and incongruous offices. The father of the subject of this sketch was mainly instrumental in raising the *status*, and with that the salaries, of the local sheriffs, and in extending the jurisdiction and improving the administration of justice in Sheriff Courts. His son Andrew possessed the same high qualities which distinguished the father—sound sober sense, undaunted perseverance, and high consciousness in discharge of duty. He was called to the Scotch Bar in 1835, and soon thereafter was appointed Sheriff-Substitute of Ayrshire. He was removed to the like office in the metropolitan county, which he filled with much distinction for about twenty years. So eminent was his excellence as a judge, that in the year 1865 he was promoted to the office of principal sheriff

of the large and important county of Aberdeen, being only the third instance of such promotion in Scotland. Mr. Jameson had a constitutional delicacy in the throat, which prevented him taking the place he otherwise would in forensic pleading, but which enabled him to devote more time to other and severer studies. The same cause compelled him frequently to sojourn in more temperate regions than his fatherland. In these sojourns he became ultimately acquainted with continental laws and general principles of jurisprudence. He was twice called on to apply his extensive knowledge to the formation of codes, civil and criminal, for the island of Malta. These productions were admitted by highest authorities to have been eminently successful, and remain imperishable monuments of his great legal industry. Sir P. Stuart, the Governor of Malta, described these laws as exhibiting "a more extensive knowledge of the provisions of the continental codes, as well as an intimate acquaintance with the general principles of criminal legislation." Lord Derby expressed his "deep sense of the ability and learning which Mr. Jameson had brought to bear on the subject." The celebrated jurist, Mittermayer, of Heidelberg, added his tribute of commendation to the works. More appropriately, Mr. Jameson was offered an opportunity of applying his laws to practice. He was offered the office of Chief Secretary of the island, but which he modestly declined. His frequent sojourns on the continent brought him in intimate connection not only with the jurists but with the theologians of other lands. His strong religious sentiments led him to take an active interest in the evangelisation of Italy and other foreign lands. As an office bearer in the Free Church of Scotland his name was foremost in every effort for the good of mankind at home and abroad, and it will be long before the void in this quarter occasioned by his premature death is completely supplied. His latter end was mournful in the extreme. A son was resident in Glasgow, preparing for a mercantile career. He was attacked with that mysterious malady—diphtheria. The father, oblivious to his own susceptibilities in that respect, with his wonted zeal and courage, for a time became the anxious nurse of his son. The young man having shown symptoms of recovery, the father returned to his duties in Edinburgh. He scarcely had returned, when there appeared in himself symptoms of the fatal disease. His beloved son had a relapse, under which he soon sank. The death was communicated to the father, and who next day followed his son in death. His life was one laborious and useful, and its close perfect peace. He departed this life 30th October last, aged fifty-nine. The highly respected Sheriff-Substitute at Aberdeen, Mr. Comries Thomson, at the sitting of the Court next following the decease of the Sheriff-Principal, spoke a funereal oration, which, because of its truthful exposition and excellent taste, we could have wished to have inserted *in extenso* in our pages. None who knew the respected judge but will heartily subscribe to the truth thus spoken, that "by his removal the public has lost one of its ablest, most experienced, and most devoted servants, society has been deprived

of an honest, lovable, and accomplished man, while the Church has to mourn for an active and yet most humble Christian."

THE HON. WILLIAM HUME BLAKE.

WE record the death, at Toronto, on the 15th of November, of the Hon. William Hume Blake, Ex-Chancellor of Upper Canada, in his sixty-second year. The *Canada Law Journal*, commenting on his death, says:—

"Although some years have passed since Mr. Blake retired from his position on the Bench, and thus practically severed his connection with the profession, we cannot permit the occasion to pass without a tribute to his memory. He was born in the county of Wicklow, Ireland, on the 10th March, 1809, at Kiltegan. Of this parish, his father, the Rev. Dominick Edward Blake, who died at the early age of fifty from the same disease which has now carried off his son, was Rector. He was educated at Trinity College, Dublin, and was at first intended for the medical profession, having studied under Sir Philip Crampton. He subsequently thought of entering the Church, as in fact did his brother, the Rev. D. E. Blake, late Rector of Thornhill. In 1832 Mr. Blake emigrated to Canada, and settled in the township of Adelaide, with other members of his family, having shortly before he left Ireland married his cousin, Catherine Hume, the grand-daughter of William Hume, M.P., for Wicklow, well known in his day as a loyal gentleman, murdered by the rebels in 1798. He commenced the study of the law in 1834, in the office of Mr. Washburn; and though he began his legal studies later in life than is usual, he set to work with so much energy that he appeared to compress into a few years the work usually allotted to many. He formed a partnership with Mr. Joseph C. Morrison, now the senior Puisne Judge in the Queen's Bench, and they were afterwards joined by the late Dr. Connor, who, as well as his partners, was also, in 1863, elevated to the Bench. Though for several years one of the most able, fearless, eloquent, and successful of advocates, Mr. Blake will be best remembered in his intimate connection with the Court of Chancery, as its first chancellor. The reformation of this Court was undertaken by the Baldwin-Lafontaine Government, of which Mr. Blake was Solicitor-General, in 1843; and it was then established on its present footing mainly through Mr. Blake's exertions. He was naturally selected by his colleagues as the proper and most desirable person to fill the seat of Chancellor, to which he was appointed on the 30th September, 1849; and the wisdom of the choice was proved by the thorough and efficient manner with which he set to work to remodel and thoroughly renovate and reform the then existing system of Chancery practice in every branch and detail.

"Mr. Blake was a warm politician of the liberal school; and in those days when politics ran high, he was never accused of being lukewarm in his adherence to his party. . . . Whilst Sir Edmund Head was Governor-General, Mr. Blake was appointed

Chancellor of the University, and zealously and earnestly devoted himself to the task of raising the University to the honourable position which it now occupies. All who were brought in contact with him will bear testimony to the manner in which he discharged the duties of this office. In 1862 ill-health compelled the chancellor to resign his seat on the Bench; but though he was afterwards appointed one of the judges of the Court of Appeal, he was never able to undertake any judicial duties."

THE TREASURY AND THE BAR.

The following important communication has been received by the Assistant Judge of the Middlesex Sessions, from the Treasury in reference to the Bar and solicitors practising at that Court:—

"Treasury Chambers, November, 1870.

"SIR,—With reference to the return of criminal prosecution expenses for the county of Middlesex, in the half-year ended June 30, 1870, I am desired by the Lords Commissioners of Her Majesty's Treasury to state that in all cases at the sessions, where the number of witnesses does not exceed four, they have reduced the fee to counsel to 23*s.* 6*d.*, which they consider to be sufficient when no explanation is offered to justify a higher fee, and throughout the accounts their Lordships have allowed 12*s.* 6*d.* for brief instead of 21*s.* and upwards, in accordance with the arrangement made many years since, that the former sum should be allowed to the county solicitor for copy of depositions in every case in his conducting the prosecution, any solicitor retained by the prosecutor himself for this purpose being only recognised as acting on behalf of his client. Should any explanation be desired on this or any other point, the examiner of criminal law accounts will be glad to confer with yourself or the deputy clerk of the peace on an appointment being made for that purpose.

"Three unsigned orders are herewith returned to be included when signed in the next return. The remaining disallowances and reductions are similar to those mentioned in former communications from this board.

"I am to add that great inconvenience is occasioned by the separation in the return of the orders for expenses, for supplementary orders, for professional allowances, payments of additional witnesses, &c., and all orders connected with the same case should follow one another regularly. Much trouble and loss of time would be saved by arranging the cases in the order in which they stand in the calendar.

"In future the particular session to which each prisoner was committed must be stated in the order for the conveyance of convicts, or the expenses of their conveyance cannot be allowed.

"I am, Sir, your obedient servant,

"J. STANSFELD."

The members of the Bar have agreed to appoint a committee to consider and act in such a manner as might be deemed expedient.

SITTINGS OF THE JUDGES.

According to a Parliamentary paper just published, the Lord High Chancellor during the past year sat for 146 days, seventy of which were devoted to the hearing of appeals and the Committees for Privileges in the House of Lords, and seventy-six days in the hearing of appeals in the Court of Chancery. The Master of the Rolls sat 174 days, the Lord Justice 130 days, and the three Vice-Chancellors 169, 172, and 172 days respectively. In the Court of Exchequer the Lord Chief Baron sat 226, Baron Martin 297, Baron Bramwell 148, Baron Channell 169, Baron Pigott 195, and Baron Cleasby 216 days. The judge of the Court of Probate and for Divorce and Matrimonial Causes sat 219 days during the past year; the judge of the High Court of Admiralty sat 133 days, and the assistant-judge of the Middlesex Court of Sessions sat ninety days.

THE NEW YORK CODES.

WE have frequently had occasion of late to animadvert on the shortcomings of the Codes of New York—a work which has by many been much praised, perhaps not so much as a triumph of legal learning in the compilers, as the accomplishment of a feat which has baffled the energies of law reformers for the last quarter of a century. Our learned contemporary, the *American Law Review*, in noticing the articles contained in ours on that subject, comments upon the Code in the following manner:—

“This number begins with an article on the Civil Code of New York, a work which has met with very undeserved and very ignorant praise in England. This article will show, to any one who cares to know, that the Civil Code is nothing but a text-book, and a very poor one.”

Such a statement coming from the quarter it does is entitled to every respect, and we hope it will not be long before an attempt is made to amend and otherwise improve a work, the basis and introduction of which have bidden so fair to give general satisfaction.

EXAMINATIONS AT THE INCORPORATED LAW SOCIETY.

Michaelmas Term, 1870.

At the final Examination of Candidates for Admission on the Roll of Attorneys and Solicitors of the Superior Courts, the Examiners recommended the following gentlemen, under the age of 26, as being entitled to honorary distinction:—Seddon Bowman Smith, John Titterington Bownass, Edward Augustus Salmon, Richard Seddon Toller, Thomas Astley Horace Hammond, B.A.

The Council of the Incorporated Law Society have accordingly awarded the following Prizes of Books:—To Mr. Smith, the Prize of the Honourable Society of Clifford's Inn; Mr. Bowrass, the Prize of the Honourable Society of Clement's Inn; Mr. Salmon, Mr. Toller, and Mr. Hammond, Prizes of the Incorporated Law Society.

The Examiners also certified that the following Candidates, under the age of 26, passed examinations which entitle them to commendation:—Uriah Bower Brodribb, B.A., George Crossby, Edward Amphlett Davis, Edward Downes, Arthur Gough Harvie, Francis Creed Mayer, Samuel Wells Page, Edward Henry Plant. The Council have accordingly awarded them Certificates of Merit.

The Examiners further announced to the following Candidates that their answers to the questions at the examination were highly satisfactory:—Arthur Evans, Edward Duncombe Eagles, Henry Sandford. That Mr. Evans would have been entitled to a Prize, and Mr. Eagles and Mr. Sandford to Certificates of Merit, if they had not been above age of 26.

The Examiners also reported that among the Candidates from Liverpool in the year 1870, Mr. Seddon Bowman Smith passed the best examination, and was, in the opinion of the Examiners, entitled to honorary distinction. The Council have therefore awarded to Mr. Smith the Prize, consisting of a gold medal, founded by Mr. Timpron Martin, of Liverpool. The gold medal founded by Mr. John Atkinson, for Candidates from Liverpool or Preston, who have shown themselves best acquainted with the law of real property, and the practice of conveyancing, has been awarded to Mr. Lionel Barned Mozley, of Liverpool.

The Examiners also reported that among the Candidates from Birmingham in the year 1870, Mr. Joseph Bennett Clarke was entitled to honorary distinction. The Council have accordingly communicated this report to the Birmingham Law Society. Mr. Frederick Huxley, having, among the Candidates in the year 1870, shown himself best acquainted with the law of real property and the practice of conveyancing, the Council have awarded to him the Prize, consisting of a gold medal, founded by Mr. Francis Broderip, of Lincoln's Inn.

The number of Candidates examined this term was 132: of these, 125 passed, and 7 were postponed.

BAR EXAMINATIONS.

At the general examination of students of the Inns of Court, held at Lincoln's Inn Hall, on the 28th, 29th, and 31st October, and the 1st November, 1870—

The Council of Legal Education awarded to John Garforth Cockin,

Esq., Lincoln's Inn, a studentship of fifty guineas per annum, to continue for a period of three years; Seward William Brice, Esq., Inner Temple, an exhibition of twenty-five guineas per annum, to continue for a period of three years; William Bowen Rowlands, Esq., Gray's Inn, a certificate of honour of the first class; and to William Appleton, Esq., Richard Thomas Burney, Esq., (including Hindu law, &c.), Dennis Fitzpatrick, Esq., (including Hindu law, &c.), Henry William Gibson, Esq., (examined in Hindu law, &c., only), Richard Luck, Esq., Cornelius Carden Masters, Esq., Charles James Tarring, Esq., Inner Temple; John Harry Boome, Esq., Walter Mytton Colvin, Esq., Henry Anselm de Colyar, Esq., Charles Coleman Dillon, Esq., James Broughton Edge, Esq., Edward Walker Brandard Malkin Hance, Esq., Charles William Hoskin, Esq., John Edwin Howard, Esq., (including Hindu law, &c.), George Charles Kilby, Esq., Benjamin Law, Esq., James Henry Nelson, Esq., (including Hindu law, &c.), Edwin Pears, Esq., Middle Temple; Thomas Maitland Gibson, Esq., George Knox, Esq., Samuel Lee, Esq., Edward Stanley Roscoe, Esq., Lincoln's Inn; and George Welby King, Esq., Gray's Inn, certificates that they have satisfactorily passed a public examination.

CALLS TO THE BAR.

Michaelmas Term, 1870.

MIDDLE TEMPLE.—Archibald Brown, M.A., University of Edinburgh, and B.A., Christ Church, Oxford; holder of a certificate of honour awarded by the Council of Legal Education in Trinity Term, 1870; Charles John Sugrue, B.A., University of London, and of the Irish Bar; John MacDougall Joy, of Trinity College, Dublin; Henry Bampton, B.A., Christ's College, Cambridge, and B.A., Trinity College, Oxford; Francis Henning Pain, LL.B., Trinity Hall, Cambridge; George Randolph Kennedy, B.A., Brasenose College, Oxford; David Sutherland, Charles Eugene Velge, Richard James Quin, B.A., LL.B., Trinity College, Dublin; Charles William Hoskin, Edwin Pears, LL.B., University of London, Exhibitioner in Constitutional Law and Legal History, July, 1870; William Channel Bovill, Edwin Bathurst, William Meigh Goodman, B.A., University of London; Arnold de Beer Baruchson, Edward Morehead Wood; Alfred Beamish, B.A., Trinity College, Dublin; François Stanislas Edouard Pelte; Edward Walker Brandard Malkin Hance, LL.B., University of London, Esqs.

INNER TEMPLE.—Paul Ferdinand Willert, M.A., Oxford; Henry Bargrave Finnely Deane, B.A., Oxford; Philip Howard Smith, B.A., Cambridge; Ralph Bagnall Bagnall-Wild, B.A., Cambridge; James Blackburn; Charles Edward Malden, B.A., Cambridge; Richard Ousely Blake Lane, B.A., Dublin; Frank John Fenton, B.A., Cambridge; Oriel Farnell Walton, B.A., Oxford; Robert John Beadon, B.A., Oxford; Frederic Marshall, B.A., LL.B., London; Robert Montagu Tabor, B.A., Cambridge; Henry William Gibson; Henry Francis Auldjo, M.A., Oxford; James Somervell, jun., B.A., Oxford; Joseph Gunning Simonds Fitz-Simon; James George Best, B.A., Cambridge; Thomas George Adams Palmer; Peter Sophocles John, London; and William Barker Rose, Esqs., the Hon. Ralph Arthur Douglas Elliot, B.A., Cambridge.

LINCOLN'S INN.—John Garforth Cockin, University of London, holder of Studentship, Michaelmas Term, 1870; Henry Leland Harrison, Oxford; Francis Hill Baynes, M.A., Oxford; Howel Jeffreys, B.A., Oxford; Harry

Lacey Frazer, B.A. and LL.B., Cambridge; George Knox, B.A., Sydney University and Cambridge; Richard Marrack, B.A., Cambridge; Francis Patrick, M.A., Cambridge; William Johnson Kaye, B.A., Cambridge; George Royle; Thomas Lancelot Croome, B.A., Cambridge; Henry Moe Keary, B.A., Cambridge; Henry Charles Deane, Exhibitioner in Equity and Real Property; Dadabhai Dossabhai Cama, University of Bombay; and Robert Pughe Jones, B.A., Cambridge, Esqs.

GRAY'S INN.—George Edwards, Lee prizeman, 1868; George Welby King, Common Law exhibitioner, July, 1869, and real property law exhibitioner, July, 1870.

Hilary Term, 1871.

MIDDLE TEMPLE.—Hector Graham Browne; James Henry Nelson, M.A., Cambridge (late Fellow of King's College); Henry Denny Warr, M.A., Cambridge (Fellow of Trinity Hall); Frederick John Staples-Browne, Benjamin Law, M.A., Oxford; Walter Mytton Colvyn, LL.B., Cambridge; Charles Metcalfe Dick, Francis Smith, George Laughton, Richard Ingram Dansey, B.A., Oxford; James Cruikshank Roger, William Augustus Bonnaud, Edmund Albert Nuttall Royds, George Charles Kilby, Charles Coleman Dillon, Jacob Thomas Geoghegan, B.A., Trinity College, Dublin; and Edgar Hutchinson Little, M.A., Oxford, Esqs.

INNER TEMPLE.—Henry Herbert Stephen Croft, M.A., Cambridge; Cornelius Neale Dalton, M.A., Cambridge; Henry Wagner, M.A., Oxford; William John James, B.A., Cambridge; Francis Henry Blackburne Daniell, M.A., Cambridge; William Wightman Wood, B.A., Oxford; William Henry Walter Ballantine, LL.B., Cambridge; James Jardine, M.A., Cambridge; Arthur Edward Clarke, B.A., Cambridge; Charles Welsby, B.A., Cambridge; Henry Anchade Harben, B.A., London; John Henry Crawford, B.A., Oxford; Charles James Tarring, B.A., Cambridge; Isaac Richard Reece, B.A., Cambridge; Thomas James Sanderson, Cambridge; Percy Gye; the Hon. Frederick George Lindley Wood, B.A., Cambridge; Edmund Kelly Bayley, LL.B., Cambridge; Henry Lyon Anderton, B.A., LL.B., Cambridge; Edward Morten, B.A., Cambridge; George Flood France, B.A., Oxford; and George Herbert Morrell, M.A., Oxford, Esqs.

LINCOLN'S INN.—Sidney James Owen, M.A., Oxford; Alexander William M'Dougall, B.A., Cambridge; James Leupriere Hammond, M.A., Cambridge (Fellow of Trinity College); Eaglesfield Bradshaw Archibald Lockhart Smith, M.A., Cambridge (Fellow of Christ's College); Christopher Henry Edmund Heath, B.A., Oxford; Percy Mitford, Russell Donnithorne Walker, B.A., Oxford; John Timms, B.A., Cambridge; William Rann Kennedy, B.A., Cambridge (Fellow of Pembroke College); Arthur Johnston Mackey, B.A., Oxford; Wallwyn Poyer Burnett Shephard, B.A., Cambridge; Robert Wardrop, University of Edinburgh; Thomas Maitland Gibson, B.A., Oxford; Henry Ernst Hall, B.A., Cambridge; George Pemberton Leach, B.A., Oxford; Edward John Watson, B.A., Cambridge; William Wilbraham Ford, B.A., Oxford; Jamshedji Jivanji Gazdar, M.A., Bombay University; Hormusjee Pestonjee, B.A., Bombay University; Harold Carlyon Gore Browne, B.A., Cambridge; Alexander Robertson, M.A., University of Edinburgh; and George Robert Elsmie, University of Aberdeen, Esqs.

GRAY'S INN.—William Bowen Rowlands, M.A., Oxford (Certificate of Honour, first class, Michaelmas Term, 1870).

APPOINTMENTS.

Mr. Justice Keating and Mr. Justice Lush have been selected as Election Judges for the Common Pleas and Queen's Bench respectively for the ensuing year.

Mr. J. R. Davidson, Q.C., has been appointed Judge Advocate-General, in succession to Sir Colman O'Loughlen.

Mr. George Clive, Barrister-at-Law, has been appointed Chairman of the Herefordshire Quarter Sessions, in the room of the late Mr. John Freeman.

Mr. Serjeant Tindal Atkinson has been appointed County Court Judge of Circuit No. 28, in the place of Mr. A. J. Johnes, resigned.

Mr. W. T. Greenwood, of the Northern Circuit has been appointed Recorder of Berwick-upon-Tweed, in the place of Mr. Ingham, Q.C., resigned; Mr. Thomas Gunner, of the Western Circuit, appointed Recorder of Southampton; and Mr. F. A. Philbrick, of the Home Circuit, Recorder of Colchester, in the place of Mr. Bushby.

Mr. G. J. P. Smith, Barrister-at-Law, has been appointed one of the Masters of the Court of Queen's Bench.

The Joseph Hume Scholarship in Jurisprudence, of 20*l.* per annum, of the University College, tenable for three years, has been awarded to Mr. George Serrell, M.A., London.

Mr. J. T. Hibbert, M.P., Barrister-at-Law, has been appointed Under-Secretary of State for the Home Department, in succession to Mr. E. H. Knatchbull-Hugessen, transferred to the Colonial Office.

Sir Andrew Fairbairn, Barrister-at-Law, has been elected Chairman of the Leeds School Board.

Mr. T. Erskine May, Barrister-at-Law, has been appointed to succeed Sir Dennis le Marchant, as Clerk of the House of Commons.

Mr. Horace Brooke, Barrister-at-Law, has been appointed Secretary to Lord Justice Mellish.

Mr. E. J. S. Edgecombe, Barrister-at-Law, has been appointed Private Secretary to the Chairman of the London School Board, Lord Lawrence.

Mr. Richard Williams, Solicitor, has been appointed Town Clerk of Beaumaris; Mr. C. F. Preston, Solicitor, Town Clerk of Barrow-in-Furness; Mr. Thomas Speechly, Solicitor, Deputy Registrar of the City of London Court.

Mr. E. P. Jones, Solicitor, Registrar at Whitechurch, of the County Court; Mr. H. G. Faher, Solicitor, Clerk to the Stockton School Board; Mr. T. H. Kirby, Solicitor, Clerk to the Coventry School Board; Mr. J. T. Belk, Solicitor, Clerk to the Middlesborough School Board; Mr. J. R. Donald, Solicitor, appointed Auditor of the West Cumberland Audit District, by the Poor Law Board, in the room of the late Mr. Yarker; Mr. B. J. Wilkinson, Law Clerk to the Bermondsey Vestry; and Mr. A. B. Salmon, Clerk to the Magistrates of the Ulverston Petty Sessional Division.

IRELAND.—The following changes, consequent on the death of Mr. Charles Shaw, Q.C., have taken place:—Mr. O'Hagan, Q.C., from the Chairmanship of Westmeath to that of Leitrim; Mr. William Newell Barron, Q.C., from the Chairmanship of Kerry to that of Monaghan; and Mr. Charles H. Hemphill, Q.C., from the Chairmanship of Leitrim to that of Kerry. The vacancy caused by the recent death of Mr. James M'Mahon, District Registrar at Limerick, has been filled by the transfer thereto from the Principal Registry of Mr. Henry Begley, the Second Clerk of the Entries; Mr. E. W. Costello, Barrister-at-Law, has been appointed Senior Crown Prosecutor for the County of Mayo, vice Mr. P. J. Blake, resigned, and Mr. C. P. O'Flaherty, Barrister-at-Law, Junior Crown Prosecutor for the same County, vice Costello, promoted.

SCOTLAND.—Sheriff-Substitute Guthrie Smith has been appointed Sheriff of Aberdeen and Kincardine. Mr. Archibald Reid, Sheriff-Clerk, has been appointed Commissary-Clerk of Perthshire, and Mr. John Cheyne, Sheriff-Substitute for the Dundee District of Forfarshire, in the room of Mr. J. Guthrie Smith, resigned.

INDIA.—Mr. George Campbell, Barrister-at-Law, has been appointed to the office of Lieutenant Governor of Bengal; Mr. G. C. Sconce, Barrister-at-Law, Clerk of the Court of Small Causes at Calcutta; Mr. C. P. Cooper, Barrister-at-Law, to act as Master and Registrar in Equity in the High Court of Bombay; Mr. William Stokes, Secretary to the Government of India in the Legislative Department; Mr. G. C. Paul, Barrister-at-Law, to officiate as a Judge of the High Court of Judicature in Bengal during the absence of the Hon. W. Markby.

MAURITIUS.—Mr. G. B. Colin has been appointed Procureur Advocate-General, in succession to Mr. John Gorrie.

ST. HELENA.—Mr. W. A. Parker, Chief Justice, has been appointed a Member of the Executive Committee.

SIERRA LEONE.—Mr. Charles Fyfe, Barrister-at-Law, has been appointed Queen's Advocate.

Necrology.

October.

- 4th. TEMPANY, Edward, Esq., Solicitor, aged 33.
- 5th. NETTLESHIP, Henry J., Esq., Solicitor, aged 63
- 8th. TELFAIR, C. Robert, Esq., Barrister-at-Law, aged 48.
- 16th. HACKER, J. Heathcote, Esq., Solicitor, aged 76.
- 21st. SCADDING, E. Ward, Esq., Solicitor, aged 77.
- 21st. RUST, Thomas, Esq., Barrister-at-Law, aged 53.
- 22nd. KIRWAN, A. Valentine, Esq., Barrister-at-Law, aged 66.
- 23rd. TOURNAY, Robert, Esq., Solicitor, aged 71.
- 25th. TILSLEY, G. Fawler, Esq., Solicitor, aged 75.
- 25th. HUGHES, John, Esq., Solicitor, aged 47.
- 25th. LAW, George, Esq., Solicitor, aged 83.
- 27th. MURRAY, William, Esq., Barrister-at-Law, aged 73.
- 28th. BROWNE, J. Rogers, Esq., Solicitor, aged 47.

November.

- 8th. BENTLEY, H. William, Esq., Solicitor, aged 51.
- 15th. CLIFTON, J. Hall, Esq., Solicitor.
- 15th. WILLIAMS, W. Q., Esq., Barrister-at-Law, aged 42.
- 16th. DAWSON, F. D. Massy, Esq., Barrister-at-Law, aged 67.
- 18th. Hyme, George, Esq., Taxing Master of the Court of Chancery.
- 23rd. SHACKELFORD, J. Shuckburgh, Esq., Barrister-at-Law,
aged 67.
- 23rd. REW, Rev. W. A., Esq., D.C.L., Barrister-at-Law.
- 27th. ROWLEY, J. Campbell, Esq., Solicitor, aged 40.
- 28th. ARCHBOLD, J. Frederick, Esq., Barrister-at-Law, aged 85.

December.

- 1st. BRANSTON, J. William, Esq., Barrister-at-Law, aged 57.
- 2nd. PAYNE, R. Ecroyd, Esq., Solicitor.
- 3rd. SHEPPARD, H. Richard, Esq., Solicitor, aged 38.
- 4th. SUDLOW, John, Esq., Solicitor, aged 49.
- 5th. WALTER, H. Finlay, Esq., Solicitor.
- 8th. YARKER, R. Francis, Esq., Solicitor.
- 11th. LING, Henry, Esq., Solicitor, aged 66.
- 18th. JEFFERSON, J. William, Esq., Solicitor, aged 31.
- 21st. GLOVER, Mr. Serjeant, LL.D.
- 24th. HALL, T. Henry, Esq., Barrister-at-Law, aged 74.
- 26th. BOURKE, Walter, Esq., Q.C., aged 67.
- 26th. BRANDT, William, Esq., Barrister-at-Law, aged 40.
- 31st. HINCHLIFF, Edwin, Esq., Solicitor, aged 30.
- 31st. AYKBOURN, T. H., Esq., Barrister-at-Law, aged 94.

January.

- 3rd. DAWES, Thomas, Esq., Solicitor, aged 97.
 - 3rd. GIBSON, W. Sidney, Esq., Barrister-at-Law, Registrar of the
Newcastle Court of Bankruptcy.
 - 7th. WATERFIELD, Charles, Esq., Barrister-at-Law, aged 64.
 - 7th. LATHAM, Henry, Esq., Barrister-at-Law.
 - 8th. HOARE, Charles R., Esq., Barrister-at-Law.
 - 9th. PEARCE, John, Esq., Solicitor, aged 44.
 - 13th. COOPER, Frederick W., Esq., Barrister-at-Law, aged 34.
 - 14th. WALL, John, Esq., Solicitor, aged 82.
 - 15th. CODD, A. Gamble, Esq., Barrister-at-Law, aged 55.
 - 15th. OVEREND, Thomas, Esq., Solicitor, aged 74.
 - 17th. BANKS, Richard, Esq., Solicitor, aged 79.
 - 21st. TEMPLE, Christopher, Esq., Q.C., aged 79.
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